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DIRECTOR'S PREFACE

This is the second of a series of studies of the NRA undertaken by the Institute of Economics under the immediate direction of Leverett S. Lyon. The first, *The Economics of Free Deals,* dealt with a specific controversial trade practice and the types of problems which the regulation of such a practice presented to trade and government officials. This volume, on the other hand, is a general introductory statement dealing with the National Industrial Recovery Act and the Recovery Administration during the first few months of their existence.

The Recovery Act occupies a central place in the President's recovery program. The administration of that Act has definitely affected not only every industry but almost every person in the economic life of America. Yet so energetic has been the execution of the NRA program and so quickly changing the aspects which have been brought to the public's attention that it has been difficult, if not impossible, even for interested persons to see the significance of the law as a whole or to observe its administration with proper perspective. In view of this difficulty, it is believed that this preliminary view of the NRA will be useful in furthering the Institute's object "of ascertaining the facts about current economic problems and of interpreting these facts for the people in the United States in the most simple and understandable form." It goes without saying that discussion of the results of the NRA program must be postponed

until more time has passed and more study has been devoted to understanding them.

Charles L. Dearing, who is on leave from the Institution to act as an assistant deputy administrator of the NRA, completed the collection of data used in his part of this work before his duties at the NRA were begun. Harold G. Moulton and Arnold Bennett Hall have acted with the authors as a co-operative committee. We have also had the aid of an advisory committee of the Social Science Research Council.

EDWIN G. NOURSE
Director

Institute of Economics
February 1934

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Acknowledgment is due to General Hugh S. Johnson, administrator of the National Recovery Administration, for making it possible to secure directly from the NRA much of the data used in this study.

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INTRODUCTION

The President of the United States, when affixing his signature to the National Industrial Recovery Act on June 16, 1933, declared:

> History probably will record the National Industrial Recovery Act as the most important and far-reaching legislation ever enacted by the American Congress.
>
> It represents a supreme effort to stabilize for all time the many factors which make for the prosperity of the nation and the preservation of American standards.
>
> Its goal is the assurance of a reasonable profit to industry and living wages for labor, with the elimination of the piratical methods and practices which have not only harassed honest business but also contributed to the ills of labor.

That the President should so appraise one law in a year which saw the passage under his urgent influence of so much remarkable legislation shows with clearness that the law is regarded as central to the Roosevelt Administration's program. The Administration thus indicates the magnitude of the problems to which the law is directed and the deviation from past lines of economic policy which it represents.

The occasion for the National Industrial Recovery Act was the desperate business situation which existed in the spring of 1933, and the failure of the expedients theretofore experimented with to halt the downward course of industrial activity. Deflationary developments had carried economic maladjustments to a point where the experience of earlier depressions appeared to many observers to furnish no guidance. Faith in the "self-generating" forces of recovery had almost completely

vanished. The widespread belief that the government must intervene to rout the forces of depression, in a more comprehensive way than had ever before been attempted, opened the way for new and unconventional experiments in economic policy.

The Recovery Act went into operation under conditions more auspicious than those which prevailed when it was being considered. There appeared in the early spring of 1933 certain anticipatory evidence of business improvement. From the moment that President Roosevelt took steps to meet the banking crisis which faced him at his inauguration, popular feeling began to emerge from the passive despair which had developed. The attack upon fiscal problems, especially the budget, engendered new hope in business circles. The promise of large expenditures on public works and direct relief, financed by federal credit, promised stimulation to business. The agricultural relief measures raised the hopes of farmers. The monetary authority given the President by the Thomas amendment, raising as it did the prospect of monetary inflation, aroused a speculative interest in future prices. Backed as this prospect was by the President's expressed intention to raise prices, the declining foreign exchange value of the dollar after the abandonment of the gold standard further supported the rise in the prices of commodities entering into international trade. A rise of domestic prices began in conjunction with a speculative interest in commodities which led to a stepping up of industrial production in many lines. A stock-market boom accompanied the movement.

It was in this atmosphere of aroused hope, monetary uncertainty, and incipient business boom that the National Industrial Recovery Act went into effect. Widely

accepted as further evidence of the President's firm intention to break the depression, it perhaps accentuated the optimistic tone already developing. By directing popular interest to the idea of putting men back to work and increasing the flow of money to market, it commanded attention as a stroke at the root of the trouble. The Recovery Administration rapidly took the center of the stage, in part because of the colorful personality of General Johnson, the Administrator, but mainly because the organization of its activities came home in some way to every citizen.

The Act has now been a law of the land for some months, and a center of hopes and efforts for economic recovery. When the wings of the Blue Eagle spread over the daily activities of employers and workers in hundreds of trades and industries, they became the symbolic promise of prosperity. All the publicity and activity connected with putting the Act into operation have not, however, prevented confusion in the minds of people concerning what it means and what it may be expected to accomplish. Moreover, as developments have taken place under the Act, serious misgivings and controversies concerning its effects have arisen. In the following pages no attempt is made to dispose by critical appraisal of the points upon which controversy exists. That task is reserved for the future after more careful study. The more modest endeavor here is to be of assistance to thinking persons who wish to follow understandingly what happens under the Act.

Toward this end the first part of the book is devoted to an examination of the National Industrial Recovery Act itself.[1] The lines of thought which united to create

[1] While a brief historical statement deals with the Act as a whole, the study deals essentially with only Title I of the three which constitute the law.

the Congressional atmosphere in which it was fostered and passed are reviewed in order to give better insight into the broad administrative powers granted to the President by the terms of its provisions. These provisions are then briefly summarized and their major legal and economic implications set forth.

The wheels within wheels which have been at work since the inception of the recovery program are described in Part II. An effort has been made to explain in brief compass the vast net-work of government and private agencies which has made possible the administration of this gigantic undertaking. The President's Re-employment Agreement, the "Blue Eagle drive" to enlist nation-wide acceptance of the agreement, and the procedure through which it has been administered are described. The intricate process of making, administering, and enforcing codes which has so engrossed the attention of the public for the past eight months is then presented in some detail.

PART I

THE NATIONAL INDUSTRIAL RECOVERY ACT

CHAPTER I

THE BACKGROUND OF THE ACT

At present the information necessary to give a full and accurate account of the origins of this law has not been collated. It is, however, possible to indicate the currents of ideas and events which lie back of it. The Act was devised to meet immediate needs, but it was built upon the economic and institutional foundations of the past. The protective tariff, the Interstate Commerce Commission, the various public utility commissions, labor laws, trade practice conference agreements under the Federal Trade Commission, and the corporate bodies of war time had all established patterns of thought, in terms of which it was easy to conceive of new regulation.

Familiar also to the American mind was the idea of improving the individual's situation by associative action. To the working man this meant, typically, unionism. Leaders of organized labor even pictured the possibility of an economic society in which large industrial associations would carry on production in co-operation with labor organizations. To the farmer association meant co-operation, possibly supplemented by government aid. To the business man associative action meant some sort of trade association. Trade practice conferences gave some reality to the idea that the trade association might become an important instrument in the control of business behavior.

Several lines of thought which had been receiving

much attention during the depression had attuned the minds of people having various economic interests to the idea that the national government should attempt actively to promote economic recovery. Of these, four may be mentioned. One was the idea of technological unemployment. A realization of the fact that the introduction of machines causes at least temporary unemployment is at least as old as the Industrial Revolution; but the rapid technological advance of recent years, striking instances of displacement of men by machinery, and the advancing "rationalization" of American industry between 1922 and 1929 had given the idea of technological unemployment a new interest and had made large numbers of persons susceptible to proposals which seemed to show a way towards spreading the available work.

A second line of thought was that there was overproduction in some industries, that there existed an excess of producing capacity, that society was somehow in the situation of being able to produce more than it could consume, and that this so-called lack of balance was an important factor in continuing the depression. Even before the depression there was much talk of so-called "sick industries" — those which had experienced a rapid expansion during and immediately after the war and which found unusual difficulty in adjusting themselves to a contracting market.

Related to this notion was a widely current concept generally referred to as under-consumption, or as a lack of mass purchasing power. Under-consumption, which might more accurately have been called under demand, was believed to be an important cause of depressions, which were thought to derive primarily from the inadequacy of wages to purchase the output

made possible by mass production methods. During the depression this idea was re-enforced by the absence of purchasing power in the hands of the unemployed and the loss of purchasing power of those whose wages had been cut. There developed a wide popular belief that escape from the depression was through "an increase in mass purchasing power."

A third concept, one of a more general nature, was so-called economic planning. This was a broad phrase under which were included numerous proposals to increase the amount of collective economic control. Such proposals had the common ground of distrusting individualism as the guiding principle of economic life. They varied widely in the extent to which they envisaged a departure from the capitalistic structure of economic society; from modest proposals to set up an advisory economic council to proposals to reorganize American industry into vast monopolistic trusts under close government regulation.

Fourth, the view that much competition is predatory, held in more prosperous days chiefly by business men in regard to the actions of their competitors, was nourished by widespread business failures and the price and wage reductions which always accompany depressions. Thus nourished, the notion of predatory competition was expanded into a doctrine accepted by many that the degree of competition to which we were accustomed was itself an evil, essentially destructive, and both a cause of the depression and a factor in its continuance. The prevalence of this point of view gave support to business men's proposals for modifying the anti-trust laws in quarters which heretofore had supported these laws as a bulwark against monopoly.

These strains of thought, in one form or another,

were all actively present in the discussion of means of escape from the depression.

In the spring of 1933, when the economic situation had become desperate, the proposals for government action were varied and conflicting. It was proposed to continue the policy of cheap and plentiful credit through Federal Reserve operations, and the bolstering up of financial institutions through Reconstruction Finance Corporation loans. Balancing the budget, settling the foreign-debt question, direct relief for the unemployed, independent relief for agriculture, a large program of public works, inflationary monetary experiments—all these had their active advocates. But they were being classified by many observers as inadequate stimulants to recovery, palliatives, or ill-advised experiments..

Under these circumstances a good deal of thought was being given in various quarters to how the government could quickly and directly induce large numbers of industrial establishments to move forward together in an expansion of productive activity.

Certain persons proposed a government guarantee against loss to private construction enterprises as an inducement to stimulate activity in capital goods industries. Others made more general use of the principle of government insurance against loss as a means of encouraging private business expansion. A third group thought that under government leadership voluntary agreements among the leading establishments of the most important industries to expand their schedules of production simultaneously for a period of months and also to set minimum wages and prices would serve to start the forces of recovery. It was some of those holding this latter view who drafted the earliest of the bills

which were discussed during the formative period of the Recovery Act.

This and other suggested plans, when thrown into the arena of official discussion, were brought into contact with many proposals then before Congress and with a number of influential streams of thought and interest. Congress had been considering numerous bills to modify the anti-trust laws with a view to eliminating "unfair and excessive" competition through concerted trade association action.[1]

Another group of proposals projected the establishment of an economic council which would either plan, or help business men to plan, industrial activities in such a way as to promote economic stability.[2]

Early in the special session of Congress called by President Roosevelt, the bill introduced by Senator Hugo L. Black of Alabama to limit hours of work in industry to 30 per week took a prominent place in current discussion.[3] The inflexibility of its provisions was the

[1] The Nye-Sinclair bill with the provision that the Federal Trade Commission supervise and encourage trade practice conferences for the purpose of establishing healthy conditions of competition and for eliminating unfair methods of doing business.

The bills introduced by Senator Royal S. Copeland with a similar purpose, but principally to eliminate unfair price competition.

The bill of Senator David I. Walsh to permit agreements, under Federal Trade Commission supervision, to curtail production and sales, to fix prices, and to perform similar acts not in harmony with the anti-trust laws but nevertheless believed to be conducive to the public interest.

The bill introduced in the Senate by Senator Steiwer and in the House by Representative Tinkham with a purpose similar to that of the Walsh bill.

[2] The best known of these, Senator La Follette's bill, provided for a National Economic Council which should collect and interpret economic data, consider economic problems, formulate proposals for solving such problems, and initiate the organization of councils or associations within the major branches of industry, trade, and finance.

[3] The Black-Connery bill proposed that Congress make it a crime to ship, transport, or deliver in interstate or foreign commerce, any

cause of much trepidation and opposition in industrial circles.

The framing and promotion of the Recovery Act in its final form was carried on by persons connected with or selected by the Administration. As passed it differed basically from the proposals which gave the initial impulse to the legislation. In the hearings which followed the introduction of the bill in Congress it became clear: (a) That concerted action by trade and industrial groups to end the current phase of intense competition was contemplated; (b) that the setting of standards of wages and hours of labor was contemplated; and (c) that the President was to be given a degree of power over business enterprise unparalleled in the previous peace-time history of the country. In all of this it was evident that the concept of "business affected with a public interest" was thought of as having far wider application than had been given it in the past.[4]

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commodity which was produced in an establishment where any person was permitted to work more than five days a week, six hours a day. It was at one time proposed to add to this a minimum wage provision. The primary purpose of the bill was to put more people to work, but it also was thought of as a means of creating more "consumer purchasing power."

[4] The most specific statement of what the law was intended to accomplish is to be found in the declarations of Senator Robert F. Wagner before Congressional committees. He said: "This bill is essentially an employment measure. Its object is to bring about an increase of employment at a level of wages which will afford a standard of living in decency and comfort. The methods of accomplishing this object are, first through co-operative action within industry itself, and second, by direct government expenditure on public works."

"I believe, too, that in addition it is going to improve and strengthen the ethics within industry itself by doing away with the sweatshop, the kind of competition which has been tearing down industry and where in self-defense frequently they have been required to reduce wages below a standard of decency. In that way it is going to have not only a great economic effect by increasing purchasing power, but also a

great social effect in giving the worker a wage which will permit him to live in decency. . . ." 73 Cong. 1 sess., *Unemployed,* Hearings on H. R. 5664 before the Committee on Ways and Means, pp. 91-92.

"The National Industrial Recovery bill has as its single objective the widespread and permanent re-employment of workers at wages sufficient to secure comfort and a decent living. The bill marks a far-reaching departure from the philosophy that the government should remain a silent spectator while the people of the United States, without plan and without organization, vainly attempt to achieve their social and economic ideals. It recognizes that planlessness and disjunctive efforts lead to waste, destruction, exploitation and disaster and that purposive planning awaits the substitution of regulated co-operation in place of the unlimited and frequently pernicious competition which we have heretofore regarded as the sole guardian of the public welfare. This trend in thought and action is accompanied by a widening concept of business—that all business is affected with a public interest. . . . Competition is not abolished; it is only made rational. In this bill we say that business may not compete by reducing wages below the American standard of living, by sweating labor, or by resorting to unfair practices. Competition is limited to legitimate and honorable bids in the market and real gains in technical efficiency." 73 Cong. 1 sess., *Unemployed,* Hearings on S. 1712 and H. R. 5755 before the Committee on Finance, pp. 1-2.

CHAPTER II

THE PROVISIONS OF THE ACT

The National Industrial Recovery Act is made up of three titles. The heading of Title I is Industrial Recovery, of Title II Public Works and Construction Projects, of Title III Amendments to Emergency Relief and Construction Act and Miscellaneous Provisions. The contents of Title III need no consideration in a discussion of the law. Title II authorizes an appropriation of 3.3 billion dollars for the financing of public works. Although strongly supplemental to the purposes of Title I it may be regarded as a separate piece of legislation and will be treated here only in an incidental way. Title I only will be in the foreground of attention.

The law opens with a declaration of policy. It is declared that there exists "a national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people. . . ." It is then declared to be the policy of Congress (a) to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish its amount (the constitutional basis of the Act); (b) to promote the organization of industry for the purpose of cooperative action among trade groups; (c) to induce and maintain united action of labor and management under adequate government sanction and supervision; (d) to eliminate unfair competitive practices; (e) to

promote the fullest possible utilization of the present productive capacity of industries; (f) to avoid undue restriction of production; (g) to increase the consumption of industrial and agricultural products by increasing purchasing power; (h) to reduce and relieve unemployment; (i) to improve standards of labor; and (j) otherwise to rehabilitate industry and to conserve natural resources.

The second section of Title I of the Act is essentially an empowering paragraph. This section authorizes the President to establish such agencies; to accept such voluntary services; to appoint, without regard to the civil-service laws such officers and employees; and to utilize such federal officers and employees, and with the consent of the state, such state and local officers, as he may find necessary. Any or all of his functions and powers under the Act he is authorized to delegate to such agents as he may designate or appoint. It is on this authorization of power that the establishment of the National Recovery Administration—the NRA—is based. From the same source is drawn the extensive authority delegated to and exercised by the Administrator, General Hugh S. Johnson.

Section 2 also limits the operation of the Act to two years and authorizes the President to end it sooner by a proclamation, or the Congress by joint resolution, declaring that the emergency recognized by its opening sentences has ceased to exist.

It is with Section 3 that the real content of the law begins. This section and the four which immediately follow lay out the provisions which have occupied the interest of every industry and attracted the attention of almost every individual citizen since the enactment

of the law. These sections are mainly concerned with establishing and enforcing "codes of fair competition" and "agreements" and set out certain limitations and requirements for every code. The idea of the Act is that each trade or industry shall either establish voluntarily, or be compelled to establish, standards on the basis of which all enterprises in the trade or industry shall conduct business. No specific requirements as to what the standards shall be are stated, with certain exceptions to be noted later.

Section 3 (a) lays down the basic procedure under which codes have up to the present been formed. Under this section the initiative is taken by "trade or industrial associations or groups." The law provides that such groups may place before the President for approval codes of fair competition for their respective trades or industries. The President is authorized to approve such codes, if he finds: (1) That the applicants for a code impose no inequitable restrictions to membership in the groups represented; (2) that the applicants are truly representative of the trades or industries for which they speak; (3) that such proposed codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against the latter; and (4) that the proposed codes will, in his judgment, tend to effectuate the policy of the law.

Section 3 specifically provides that codes shall not permit monopolies or monopolistic practices, and that persons whose welfare is to be affected shall not be deprived of the right to be heard prior to approval by the President. The President may impose as a condition of his approval such requirements as the making of reports and the keeping of accounts as he believes

necessary for the protection of consumers, competitors, employees, and others, and he may make such exceptions to and exemptions from the provisions of codes as he deems necessary.

The approval of a code makes any violation of its provisions an "unfair method of competition" within the meaning of the Federal Trade Commission Act and its amendments. Violations of the terms of a code may, therefore, be proceeded against by the Federal Trade Commission. Section 3, moreover, specifically invests the district courts of the United States with jurisdiction to prevent and restrain violations of the codes. It also makes any violation of code provisions a misdemeanor punishable by a fine of not more than $500 for each offense, and each day such violation continues is deemed a separate offense.

If trade groups fail to take the initiative in code-making, the President may do so. This power, given in Section 3 (d) of the law, permits the President either upon his own initiative or upon complaints which he believes to justify the action, to prescribe, after such public notice and public hearings as he shall specify, a code of fair competition for any trade or industry for which a code has not already been approved. Such codes have the same status as those initiated by trade groups and approved by the President under the provisions of sub-section (a).

This far-reaching section of the law also gives the President regulatory powers over imports when, on the basis of an investigation by the Tariff Commission, he believes such regulation necessary to render effective the purposes of codes and agreements made under the Act. He is empowered to lay down conditions upon which goods may be imported, to prescribe fees, and to

limit the quantity of imports, if he finds such action necessary to prevent any code or agreement from being rendered ineffective. Importers may be forbidden to import without first obtaining a federal license.

In Section 4 (a) is found that grant of power to the President which has become of great significance in supporting the so-called President's Re-employment Agreement (PRA). This section authorizes the President to enter into agreements with and approve voluntary agreements among persons engaged in trade or industry, labor organizations, and trade and industrial groups, if in his judgment such agreements will aid in accomplishing the purposes of the law. It is under this section that the President issued his nation-wide invitation to employers to agree with him to certain conditions, particularly regarding wages and employment. It is these general agreements which are popularly called "the blanket code," and for which the Blue Eagle was invented. This will be discussed more fully in Chapter V.

The possibilities under this sub-section are very extensive. Almost any type of agreement (between employers and employees, between members of trade groups, btween one labor union and another, between one trade group and another, and so on) which promotes the stated purposes of the law and to which the President wishes to give the sanction of his approval may be comprehended within its sweeping terms. Its purpose appears to be to facilitate any sort of agreement which may be deemed a desirable supplement to the provisions of codes. Separate codes are entered into by the members of particular trade groups, whereas individuals, different trade groups, and different labor groups may severally or jointly enter into agreements.

No penalties are specified for violation of such agreements.

A further expansion of the President's powers embodied in Section 4 (b) authorizes him, whenever he shall find that activities which he believes are contrary to the purpose of the law are being practiced in any trade or industry, to license business enterprises if he shall deem it essential to make effective a code of fair competition or agreement. No person shall, after a date which shall have been fixed in an announcement that licensing is required in an industry, engage in any business specified in such announcement unless he shall first have obtained a license pursuant to the regulations prescribed. Such licenses may be suspended or revoked by the President after hearings, if violations of their terms are demonstrated. Such revocation is declared to be final if in accordance with law, and carrying on of business without a license where a license is required is made a criminal offense. The penalty is a fine of not to exceed $500 or imprisonment not to exceed six months or both.

The licensing provision, giving the President the power of life or death over business enterprises, is the ultimate weapon of enforcement and the capstone of the powers granted to the President. Recognized as the most extraordinary extension of Presidential power in American history and bitterly attacked in Congress, this provision was made to expire one year after the enactment of the Recovery Act, or sooner if Presidential proclamation or Congressional resolution declares that the emergency recognized by the law has ended.

The powers granted the President are rendered yet more extensive by the provisions of Section 5, which have to do with exemptions from the anti-trust laws. This section provides that codes, agreements, or

licenses approved or prescribed, and all actions complying with the provisions of codes or agreements, shall be exempt from the provisions of the anti-trust laws of the United States. The comparison of this provision with the prohibition of "monopolistic practices" in Section 3 creates uncertainty concerning the extent to which the anti-trust laws have been set aside.

Section 5 also includes a declaration that nothing in the Act shall prevent an individual from pursuing the vocation of manual labor or selling the products thereof and that the Act and its regulations shall not prevent anyone from marketing or trading the produce of his farm.

Section 6 may be passed with brief comment. It makes as a necessary qualification for eligibility to code provisions the filing of such information as the President shall prescribe. It also empowers the President to prescribe such rules as shall insure that any organization availing itself of the benefits of the law shall be actually representative of the industry which it purports to represent. The President is authorized to use the investigatory powers of the Federal Trade Commission to carry out this and other provisions of Title I.

Section 7 (a) contains a mandatory prescription as to what must be included in each code adopted. This mandate, comprising three clauses, is designed in the interests of labor. It first declares that every code shall contain the conditions that employees shall have the right to organize and bargain collectively and shall be free from interference of employers in the designation of their representatives or in other concerted activities. This section was made almost immediately famous by controversies which arose over its interpretation in the preliminary discussion of the iron, steel, automobile,

coal, and other important codes. The controversy centered around the inclusion in the codes of special clauses sanctioning certain personnel policies of employers, such as the company union and the right of employers to hire and fire according to individual merit. The "merit clause" was finally included in the automobile code, providing that employers "may exercise their right to select, retain or advance employees on the basis of individual merit without regard to their membership or non-membership in any organization." Similar statements were originally included in several other proposed codes, but were finally ruled out by an order from the President that no language qualifying clause 7 (a) should be permitted in any code.

The second part of the mandatory prescription is the inclusion in each code of the condition that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining or assisting a labor organization of his own choosing. This provision strengthens the Norris-LaGuardia Act of 1932 in outlawing the so-called "yellow-dog" contract to which organized labor has been so long and so vigorously opposed. The third mandatory clause stipulates that each code shall contain the provision that employers shall comply with the maximum hours, rates of pay, and other conditions of employment approved or prescribed by the President.

Following the mandatory provision described, Section 7 (b) goes on to prescribe that where employers and employees have by mutual agreement established the standards of hours, rates of pay, and such other conditions of employment as may be necessary to effectuate the purposes of the Act, these standards may,

upon approval by the President, have the same effect as a code of fair competition. The President is to "afford every opportunity" to employers and employees to arrive at such mutual agreements. Where no such agreement is arrived at or approved, the President may investigate the situation and prescribe a "limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment as he finds necessary to effectuate the policy of the law." The wage and hour provisions of the codes so far approved have not been arrived at under this section but are merely part of the general codes drawn up under Section 3 (a). Since approved agreements under Section 7 (b) "have the same effect as" codes of fair competition, and since the President may prescribe a "limited code of fair competition," the penalties for violation by employers are presumably the same as in Section 3. No penalties are stated for violations of code terms by employees; neither is anything said concerning the right of workers to strike in industries under codes. The agreement provision of Section 7 (b) appears to be a special application of Section 4 (a) giving the force of a code to a particular kind of agreement. The power of the President to prescribe a "limited code" likewise appears to be a special application of Section 3 (d) under which he may prescribe a comprehensive code.

Final sections of Title I of the Act (Sections 8, 9, and 10) deal with its relationships to the Agricultural Adjustment Act, with a special provision concerning oil regulation, and with authorizations to the President for making the law effective. Section 10 might assume a very great significance. This is the final provision of the title, which gives the President power "from

time to time to cancel or modify any order, approval, license, rule, or regulation issued under this title," and which requires that every code issued under the law shall contain an express provision to that effect. The President, it appears, is thus authorized to remake in any way any code at any time during the life of the law.

Viewed as a whole, the National Industrial Recovery Act is primarily a piece of enabling legislation. Giving the President unprecedented peace-time powers, it requires nothing of him. He need not promulgate or approve any code. If a code is approved, the only positive requirement, as above stated, is that it include certain labor provisions required by Section 7. Negatively there are a few requirements stated in Section 3 concerning such things as the representative character of trade groups, the prohibition of monopolistic practices, and the interests of small enterprises. Beyond that the President has a free hand.

Indeed, from an examination of the Act alone, it would not be possible to infer definitely what was intended or exactly how the Act was expected to induce recovery. Since the law outlined a procedure for the setting up of codes of fair competition, it might be assumed that prevailing competitive practices were believed to be partly responsible for the continuance of the depression and that a modification of these would promote recovery. It could also reasonably be inferred that in the setting of standards, those affecting wages and hours of labor were conceived to be of primary importance. Beyond these points the significance of the law is to be found only in the administrative use which has been made, or may be made, of the extensive powers granted. It is a law which, with the exceptions already noted, neither requires nor forbids.

If administered on the plane of voluntary co-operation, the Act provides potentially a constitution for limited self-government by trade groups, subject to government supervision. If, however, administration on that plane does not accomplish the desired results, the constitution may be made one, not of self-government, but of highly autocratic control of business men by the government.

CHAPTER III

LEGAL AND ECONOMIC ISSUES

Since the National Industrial Recovery Act greatly expanded possible federal intervention in the area of private business activity, it of necessity has led to close scrutiny of Supreme Court decisions defining the constitutional powers of the federal government. Likewise, the pervasive readjustment of economic relationships implied by the Act has given a special degree of interest to the economic theory which underlies it.

I. LEGAL ISSUES

The National Recovery Act raises certain legal questions concerning which there exists great difference of opinion. These questions relate mainly (a) to whether the provisions of the Act and of the various codes fall within the legislative powers granted to Congress by the Constitution, and (b) to how far the provisions of the anti-trust laws may be set aside in the administration of the Act.

The only clear constitutional basis for the Act is the clause granting power to Congress to regulate commerce between several states. Federal regulation of purely local or intrastate business could only with difficulty be permitted by the Supreme Court. Since, however, it is true that the operation of almost all local businesses has repercussions upon interstate commerce, there is a plausible view that, in those cases where fed-

eral power to regulate exists, the necessities of effective regulation imply the extension of federal powers in some degree to the regulation of intrastate business. In the case of railroad rate regulation such extension of the powers of the Interstate Commerce Commission was upheld in the Shreveport case (*Houston, E. and W. T. Ry. Co.* v. *U. S.*, 234 U. S. 342). In other cases the court has used general language about intrastate business that "affects" interstate commerce which it could develop without a serious breach of continuity in its decisions.

Assuming that the principle of these cases is capable of application to other situations, two other questions arise: (a) To what aspects of intrastate business may federal regulation be extended? and (b) to what branches of business does the constitutional power to regulate apply? The Supreme Court has not clearly granted the right of the federal government to regulate local processes or conditions of production which affect commerce only indirectly, even when the products are destined to enter interstate commerce. Such local regulation has commonly been regarded as within the powers of the states alone, and any decision to the contrary would necessitate a considerable deviation from the court's past rulings. How direct the connection between local production conditions and interstate commerce must be to justify federal regulation is something that has been decided by the circumstances of particular cases and for which no general rule can be laid down. Since "interstate commerce" is in any event a concept subject to changing content in varying circumstances, the court could very well associate it more closely than in the past with a doctrine of the necessities of national organization. The powers even of the states

to regulate business are limited by various decisions of the Supreme Court under the "due process of law" clause. The right of individuals to engage in gainful employment has been the rule. Limitations of this rule have, however, been numerous, in recognition of the "police power" to limit the freedom of action of individuals when the general welfare of the community requires. Regulation of prices has only been permitted in the case of businesses peculiarly "affected with a public interest," a category capable of expansion, but in the past rather narrowly defined.

The fact that there is an "emergency" has been given as a reason for extending the powers of Congress. Emergencies are not mentioned in the Constitution. They have, however, been recognized by the Supreme Court as creating a state of facts in the light of which Congress or the states can exercise their powers in ways which they could not exercise them under other states of facts. To establish the constitutionality of all the powers vested in the President by the Act (especially the licensing power), the Supreme Court would seemingly need to revise its past rulings in two important respects: first by conceding that in the present emergency practically all businesses have become "affected with a public interest"; and second, that intrastate business is so closely tied to interstate commerce as to permit the extension of federal control over it.

In so far as the Act is administered on a voluntary basis, rather than by government coercion, most of the more difficult constitutional questions can be avoided. Any full exercise of the powers granted by the Act might, however, place before the Supreme Court as difficult a series of cases as can be imagined.

Certain parts of the anti-trust law prohibitions are

clearly not disturbed by the Act. Large corporate monopolization is in an unchanged position. Many practices of the sort established as "unfair competitive practices" or "monopolistic practices" are as illegal as ever. On the other hand, there are other practices, utilizing collective action among competitors to raise prices and illegal under the anti-trust laws, the status of which is made uncertain. The Act states that codes of fair competition shall not permit monopolies or monopolistic practices. The central question is whether price fixing, production quotas, and similar expedients, when carried on under codes set up in conformity with the Act, are to be regarded by the court as monopolistic practices. The issue when litigated will give the court an opportunity to extend the test of reasonableness into new territory. It is important to realize that neither the Act nor the codes define the degree of relief from the provisions of the anti-trust laws. The Supreme Court is the arbiter of that question.[1]

II. ECONOMIC IMPLICATIONS

The implications of the NRA program for the organization and operation of the economic system are many and varied, and of great significance. The Recovery Act was designed with the belief that it could speed the process of economic recovery. But it has numerous other aspects. It was also designed to spread the available work by a reduction of the number of working hours per week. In effect it changes the rela-

[1] The form of this statement of the legal issues, though based on acquaintance with relevant Supreme Court cases, has in a somewhat special degree been influenced by Professor Milton Handler's article, "The National Industrial Recovery Act," in the *American Bar Association Journal* for August 1933. See also *Harvard Law Review*, Vol. XLVII, November 1933.

tions between employers and labor organizations. It is a piece of welfare legislation. It introduces changes into the organization of trade and industry. It places the government in a new relationship to business enterprise. The primary significance of some aspects of the program is in the short run, and relates to the early adjustment of economic activity to the new circumstances created. In other aspects the significance is for the long run, and relates to the whole question of how economic activity is to be organized and controlled.

Adequate treatment of any of these aspects would require careful and extended theoretical analysis. No part of a study of the NRA can have more fundamental importance than such examination. Since alternative lines of policy are at all times open, careful analytical thought is necessary, either to the choosing of wise policies by the Administration, or to a discerning critique by those outside it. Though such analysis is not developed in these pages, certain fundamental assumptions which underlie the NRA program, and the issues which they raise, may be profitably set down at this time.

Particular and immediate interest attaches to the NRA as a way out of the depression. We may begin therefore by asking in what way its operations are expected to stimulate recovery. The test of its efficacy to that end is whether it acts on industry as a whole in such a way as to lead to larger output of goods and services and to fuller employment. That is the meaning of economic recovery. The lines of action already taken indicate a focus upon two policies. One is to increase directly the purchasing power of wage earners through a prescription of minimum hourly and weekly wages, accompanied in some instances by the protection of

wage differentials above the minimum. The other is to improve business prospects by the prevention of competitive price cutting, in a few instances by price fixing, but more generally by prohibiting competitive practices which result in severe price competition, and by setting up "cost protection" pricing formulas and "open-price" systems of price quotation. In some degree this latter policy is supported by the former, in that extreme wage cutting is eliminated as a means of striving for competitive advantage.

The fundamental question is: On what grounds is it supposed that action along such lines will promote recovery? It is not easy to state an accurate official theory of the recovery inducing potentialities of the NRA. This is in part because official spokesmen have never clearly differentiated between the recovery aspects of the program and the aspects of amelioration and reform. In part it is because official supporters of the program do not have an exact consensus of thought. The theoretical situation is further muddied by the fact that unofficial supporters of the program entertain a variety of reasons for such support.

A very important thought in the spring of 1933 was that the downward spiral of prices and wages must be halted. It was urged that the certain cessation of price declines would of itself mitigate, if not end, the psychology of despair and induce renewed business confidence. Progressive wage cutting was thought of as a concomitant of price competition, and one which by diminishing consumer demand intensified the competitive struggle for business. In some such terms came the argument for minimum wages. A further suggested line of attack upon destructive price competition was cooperative action by business groups to eliminate various

business practices which, in the struggle for business, kept prices moving downward. On this plane of thought, the emphasis was upon stopping a downward movement of wages and prices.

A second strand of thought was to engender an increase of current "purchasing power" and thus an upward movement of commodity prices. Lacking faith in the "automatic" improvement of business under conditions of unregulated competition, the supporters of the Recovery Act as one element of the program proposed to introduce substantial support to markets through collective action designed to increase the aggregate amount of current payrolls. The theory of the matter is somewhat as follows:

The initial step conceived as necessary is an increase of direct consumer expenditures. This is to be made possible by larger payrolls paid by business enterprises. The increased consumer purchasing power is expected to move through retail and wholesale markets to manufacturers and through them to the producers of materials and equipment, generating an expanded flow of goods. The expansion of production and trade is to give employment to yet more workers who in turn will further expand expenditures in retail markets, and so on cumulatively.

Since an "undue" rise of prices would neutralize the effect of increased wage incomes, the logic of the plan is to limit the amount of price increase and to maintain a lag between the increase in payrolls and the rise of prices. It is recognized that business may be expected to expand only if profits are in prospect even though they may not be immediately forthcoming. Profits are expected to develop from the larger volume anticipated. If a larger volume of goods is moved, the over-

head costs will be spread over a larger number of units and the higher wage costs per unit of product will be offset by lower overhead costs per unit.[2]

Complementary to the theory is the expectation that the prospective ending of "destructive" price competition will generate a state of business confidence which will lead to an expansion of business commitments and thus, so to speak, create additional ability to support higher wage rates and larger payrolls.

The general theory, as presented, raises issues of great practical importance which will be briefly summarized in a series of questions. The first question is whether the higher wage costs imposed upon business enterprises will discourage enterprise at any important points, and thus lead to a lessening of employment at those points, rather than the contrary.

[2] In a speech of June 25, 1933 the Recovery Administrator, General Hugh S. Johnson, expressed his theory of the matter in these words: "First and foremost among those things is a contract to divide up the existing work in such a way as to put hundreds of thousands of new names on the payroll and then raise the wage scale high enough to give all workers a living wage for the shorter shift. If they do this, buying will move forward on a rapid scale, and that in itself will put many more men back to work. Their own profits will come back and we shall be on our way back to the kind of a country that we knew in happier years.

"If that were all there is to it, it would be simple. But there is more to it. In the first place the tendency of higher wages is higher prices. If we do a thing like this and do not also put some control on undue price increases so that prices will not move up one bit faster than is justified by higher costs, the consuming public is going to suffer, the higher wages won't do any good, and the whole bright chance will just turn out to be a ghastly failure and another shattered hope. This does not mean selling below cost. The first effect of this plan will be to increase business and bigger business is a better way to profit than is higher price." *NRA Release No. 11,* pp. 5-16.

In a speech of July 5, Mr. Donald R. Richberg, general counsel of the NRA, said: "The objects of the National Industrial Recovery Act are well understood and universally approved. They are: to put more people to work; to give them more buying power; to insure just rewards for both capital and labor in sound business enterprise, by eliminating unfair competition." *NRA Release No. 30,* p. 1.

If it be assumed that employment does hold up and that larger payrolls ensue, the second question is whether larger aggregate payrolls will increase total aggregate purchasing power, and therefore lead to larger employment. One aspect of this concerns prices primarily, the question being whether prices will rise in a degree to offset substantially the larger wage income, or to diminish substantially the purchasing power of persons with relatively fixed incomes in the form of salaries, rent, interest, pensions, and the like.

If it be assumed that price rises are slight in degree, the other aspect concerns the source of the funds from which larger payroll disbursements are made. If they come from offsetting reductions of expenditures in the higher wage levels, salaries, and proprietary withdrawals, or of expenditures for materials, maintenance, and similar items, distribution of income and the direction of current expenditures are affected, without any clear addition to aggregate purchasing power.

The question thus arises as to whether there are possible sources of funds that, disbursed as wages, will clearly increase purchasing power. The two major suggestions are: (1) That employers may finance payrolls from bank loans; (2) that they may use idle bank deposits, thereafter carrying smaller but more active balances. It is further urged that funds diverted from alternative uses may move more quickly into the market—that a shift in the distribution of income in favor of labor may accelerate "the velocity of circulation" of money and deposits in exchange for goods and services. It is obvious that the validity of this suggestion depends upon a question of fact—that is, whether funds so shifted actually do have an effect in the market more quickly than they otherwise would.

From whatever source funds are secured, there is the necessity of present outlays against the prospect of future returns. Once these outlays are made the primary question becomes whether they will be promptly spent in markets, and if so whether the increased volume of production and sales will, within such period of time as industry is sustaining the financing, offset the added wage costs by diminished overhead cost per unit of output. If this is not the outcome, then the result is necessarily either a mere transference of income or an impairment of capital assets.

Perhaps the most crucial element in the somewhat vague original NRA theory was the thought that "business confidence" will be engendered by the prospective "improvement" of prices, and will lead to a more or less concerted forward movement in industry. While a full treatment of the NRA recovery theory would necessitate careful consideration of the element of confidence, no theoretical analysis could fully cope with its elusive qualities. It is apparent, however, that a full discussion would necessitate placing the NRA in the wider perspective of other activities of the Roosevelt Administration.

Certain important aspects of the recovery theory of the NRA appear when the effects upon costs and prices are more carefully examined. The authoritative imposition of new costs will bear down with unequal severity upon the various firms within an industry. Different firms will have unequal ability to support the financial outlays required. Different enterprises, or whole industries, will be unequally benefited by the flow of new demand deriving from such larger payrolls as may develop. Some industries may be able to offset higher wages with larger volume, while in others no

such increase of volume may accrue. If prices are increased, the result may be a more profitable operation in some cases, and loss of business in others. There will be unequal effects as between different geographical areas, between large and small cities, between large and small enterprises, between different types of industry, and between financially weak and strong enterprises. Foreign trade relationships will be affected. The structure of relative prices will be modified. The problem is whether in these myriad circumstances, a clear tendency of wage increases is to increase the aggregate output of goods and services.

Since the NRA already has a history, and administrative policies are of more immediate moment than an initial theory, a careful analytical treatment of the NRA will need to be especially concerned with the economic consequences of actual policies. No appraisal of either theory or policy will be attempted here, since the purpose is merely to display the general theory which underlies the Recovery Act and the theoretical issues which it raises.[3]

It is perhaps proper to regard the NRA, in its recovery aspects, mainly as a pragmatic experiment, based rather upon a belief that unrestrained competitive forces were ruining the country and that the process must be halted by collective action, than upon any clear conception of the intricate pattern of economic relationships involved.

The preceding discussion has run in terms of the relation of the NRA to economic recovery. If its most important immediate aspect, recovery is still only one of its aspects. Certainly the Recovery Act was intended

[3] It is the intention of The Brookings Institution to give further attention to the theory of the NRA in later publications.

as a relief measure to effect the spreading of the available work among more people. As a direct means of eliminating unemployment the codes prescribe shortened periods of daily and weekly labor. Such action implies no increase in man hours worked, in total production, or in aggregate payrolls. By itself it may have some effect upon the kinds and volume of production and upon costs of operation, but not in a degree notably to affect the recovery process. The primary effect of such action is to give jobs to more people at the expense of those already employed.

As an agency for effecting various social reforms, long advocated, the Act has large possibilities and has been used to attack child labor and "sweat shops," and to give protection to workers against unduly arduous or onerous labors. Such effects in this direction as have been accomplished under codes have come, so to speak, as by-products, but they are none the less important on that account.

In still another aspect the Act is a potential means of effecting extensive changes in the organization and control of industry. Under it quite far-reaching changes in the direction of "self-government in industry," or cartellization of industry, or government regulation of industry are possible. What has already occurred may appear to be mainly a by-product of the shorter-run purpose of spreading work and stimulating recovery, but in the long run it may well be of greater significance than the effect of the law on recovery. Again, labor unions may be greatly strengthened, their organization modified, and their influence in industrial affairs extended. Whether either of these changes is in the national interest is a question on which opinion will long differ.

The Act also appears to be thought of by some as embodying certain views with respect to the long-run regularization of economic activity, allied to the theories of business cycles which emphasize the unequal distribution of income as the principal cause of depressions. The Act does not in terms state any such theory nor require that it be administered in that sense. But one is perhaps justified in saying that the NRA is in intent an agency through which experiments may be made toward a solution of the problem of economic instability.

By placing emphasis upon the method of group action, the Recovery Act may be said to imply a partial loss of faith in the individualistic organization of economic activity. This may be thought of as temporary and related merely to a state of industrial depression, or as something deeper and more permanent, indicative of a fundamental change in national economic philosophy. How deeply national habits of thought are affected, it is perhaps futile to ask at this early stage of development. But it appears unlikely that the method of group action and a more intimate relationship between the activities of business and the government will disappear with the expiration of the Act or with the end of the depression, if for no better reason than because some of the agencies set up cannot easily be abandoned. A more cogent reason is that every extant ambition for a régime of economic planning, for centralization of economic organization, for modification of business practice, and for pursuit of group interests is in some degree centered in the maintenance of the NRA.

In the face of the innovations introduced by the NRA program it is necessary to keep in mind that it

continues to depend primarily upon prices and markets to perform their customary functions. In a capitalistic economy production is conditioned by demand and costs as they make themselves felt through markets. It is the function of prices to guide productive activity; to effect the allocation of resources to the making of one kind of goods or another; and to mediate the process of determining incomes. Prices develop into a highly complex pattern of relationships; continuous readjustments make goods move. The NRA has introduced no co-ordinated adjustment of relative prices. It has placed before producers no incentives except those that exist in markets. Since it undertakes frankly to operate within a profit economy, its problems of necessity center upon questions of costs and prices.

These considerations in a sense both state the limitations upon the work of the NRA and define its strictly economic problems. The more subtle problems of human prejudice, conflicting private interests, and political pressure are of a different order. The two sets of problems are, however, intertwined, since the economic policies adopted largely define the prejudices and private interests which are affected.

PART II

THE NATIONAL INDUSTRIAL RECOVERY ADMINISTRATION

CHAPTER IV

ADMINISTRATIVE ORGANIZATION

Immediately upon approval of the Act (June 19) the Administration set out to place the operations of American trade and industry under codes of fair competition within the shortest possible period. What was needed was an administrative organization competent to cope with such problems as could be immediately envisaged and flexible enough to be adjusted to new problems as they arose. There was no precedent in government administrative experience to serve as a pattern for the type of organization needed, and it was impossible to anticipate the multiplicity of problems which were to develop later in the process of making and administering codes and agreements. Consequently, certain divisions and agencies have been set up from time to time and later abolished; functions have been transferred from one division to another; and new divisions have been added. In general this shifting of functions and change in mechanical structure have resulted from the necessity of adapting administrative machinery to the changing character and volume of the Recovery Administration's work. In some instances changes have been made from time to time to correct defects which have appeared in the administrative structure. But the adjustment of administrative machinery to fit the various types of activities carried on by the Recovery Administration accounts for the

major changes which have been made to date in its organization.

The Recovery Administration has been concerned almost from the beginning with two important tasks: One, the making of codes; the other the formulation of the President's Re-employment Agreement. To these was added the problem of administration. Though all have gone forward, emphasis has so shifted that three fairly well-defined periods of development emerge.

The first period is characterized by an intensive effort on the part of the Recovery Administration to get codes through, especially those covering the operations of large industries. The second period witnessed a shift of emphasis from code-making to the formulation of re-employment agreements. During the third period the major efforts of the Recovery Administration were shifted back to code-making, and machinery for code administration was set in motion. The activity of any one of these periods merges into that of the others.

It is of course impossible to show graphically and in chronological order all of the adjustments which have been made in the administrative machinery of the Recovery Administration during the various periods of its development. The charts on pages 46 and 47, however, show the administrative structure under which activities characteristic of the general periods in the Recovery Administration's program have been conducted. Activities during the earlier period of the NRA (until about October 15, 1933) were conducted under the general organization shown in the first chart. The second chart shows the general outlines of the organization set up to administer the activities characteristic of the third period mentioned above.

It is not to be supposed that administrative relation-

ships can be accurately shown by such charts. Actually as problems have arisen someone has been assigned to deal with them, and the attempt to make the manifold activities fall within formal administrative boundaries has always been in arrears.

The various agencies intimately associated, either in an operating or an advisory capacity, with the administration of Title I of the Act fall into four main groups: The National Recovery Administration proper; other newly created government agencies; newly created extra-government agencies; and old-line government departments and agencies.

I. NATIONAL RECOVERY ADMINISTRATION PROPER

Under the executive order of June 16, 1933 the President conferred on the Administrator only the limited authority—subject to the approval of a Special Industrial Recovery Board—to appoint the necessary personnel on a temporary basis, to conduct hearings, and to perform other functions authorized by the Act. By a subsequent executive order issued July 15, 1933 the President delegated the following sweeping powers to the Administrator:

> . . . to appoint the necessary personnel on a permanent basis, to fix their compensation, and to conduct such hearings and to exercise such other functions as are vested in me by Title I of said Act, except the approval of codes, or making of agreements, or issuance of licenses, or exercise of powers conferred in Section 3(e), Section 6(c), Section 8(b), Section 9, and Section 10.[1]

[1] Executive Order No. 6205-A. Sec. 3(e) of the Act is the "import trade" clause which provides for special investigations by the U. S. Tariff Commission. Sec. 6(c) reserves to the President the right to initiate Federal Trade Commission investigations under Title I. Sec. 8(b) reserves to the President the right to delegate power to the Secretary of Agriculture for dealing with industries engaged in handling agricultural commodities or products thereof, or any competing commodity or product thereof. Sec. 9 reserves to the President all the

On December 30, 1933 the President delegated to the Administrator the power to approve codes except for major industries, and to approve changes in all codes.[2]

The Special Industrial Recovery Board, to which the Administrator was made in some degree responsible, was established under the executive order of June 16, with a membership as follows:

The Secretary of Commerce, Chairman
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture
The Secretary of Labor
The Director of the Budget
The Administrator for Industrial Recovery
The Chairman of the Federal Trade Commission

Among the acts performed by this board have been the approval of the Administration's program as set forth in *Bulletin No. 2,* (Basic Codes of Fair Competition); *Bulletin No. 3,* (The President's Re-employment Program); and *Bulletin No. 5,* (Regulations on Procedure for Local NRA Compliance). This board was dissolved in December 1933 and its duties transferred to the National Emergency Council, to be mentioned later.[3]

Acting under the authority delegated by the President, the Administrator has created, or approved the

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powers for oil regulation as those powers are set forth in the Act. Sec. 10 reserves to the President broad discretionary powers (a) to prescribe any rules necessary to carry out the purposes of the Act and (b) to "cancel or modify any order, approval, license, rule or regulation issued under this title; and each agreement code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect."

[2] Executive Order No. 6543-A.

[3] Executive Order No. 6513.

creation of, various advisory boards and technical divisions, together with the various operating divisions utilized in the making and enforcement of codes. These agencies constitute the Recovery Administration proper. (At this point some readers may prefer to turn to Chapters V and VI, which deal with the major activities of the Recovery Administration.)

Primary administrative divisions.—Reference to the accompanying charts will make extended comment upon the administrative organization unnecessary. In each chart the central section displays the primary organization for "putting codes through the mill." The deputy administrators are the direct contact of the NRA with trade or industrial groups applying for codes and have direct responsibility for the negotiations with the applying groups. Originally the deputy administrators were responsible directly to the Recovery Administrator. As the volume of work resulting from code-making increased, it became necessary for the Administrator to delegate certain of his responsibilities to other officials. In order to accomplish this end, and at the same time leave responsibility for the conduct of code negotiations with the deputy administrators, four administrative divisions, each headed by a division administrator, were established on October 25, 1933. During the ensuing months the number of divisions was increased to seven to accommodate the added volume of work.[4] Each division presents an integral operating

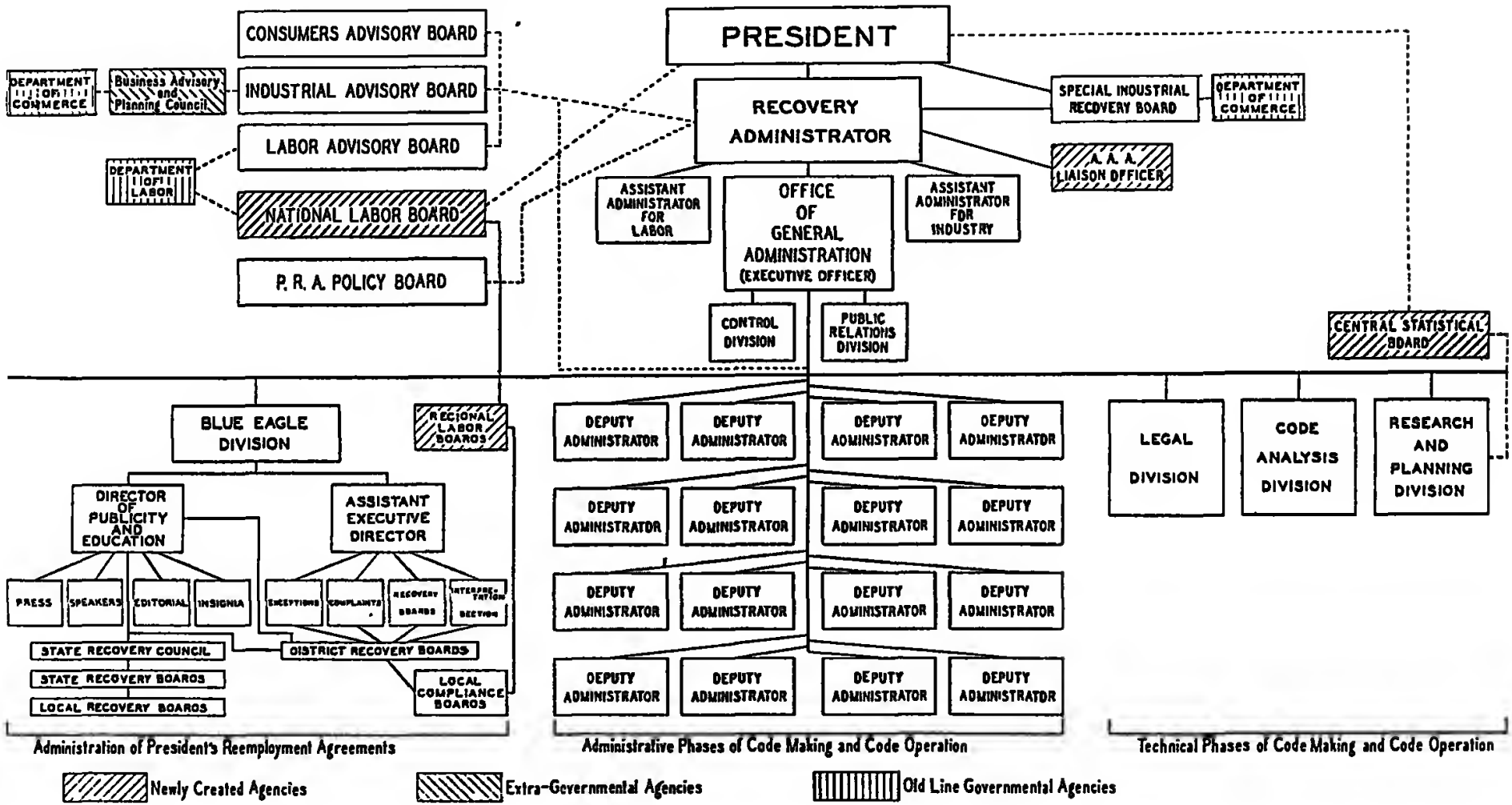
[4] The principle codes handled in each division are as follows (Feb. 15, 1934):

Division I. Public utilities, mining, shipping, iron and steel, automobile manufacture, rubber, fire extinguishers, cap and closure.

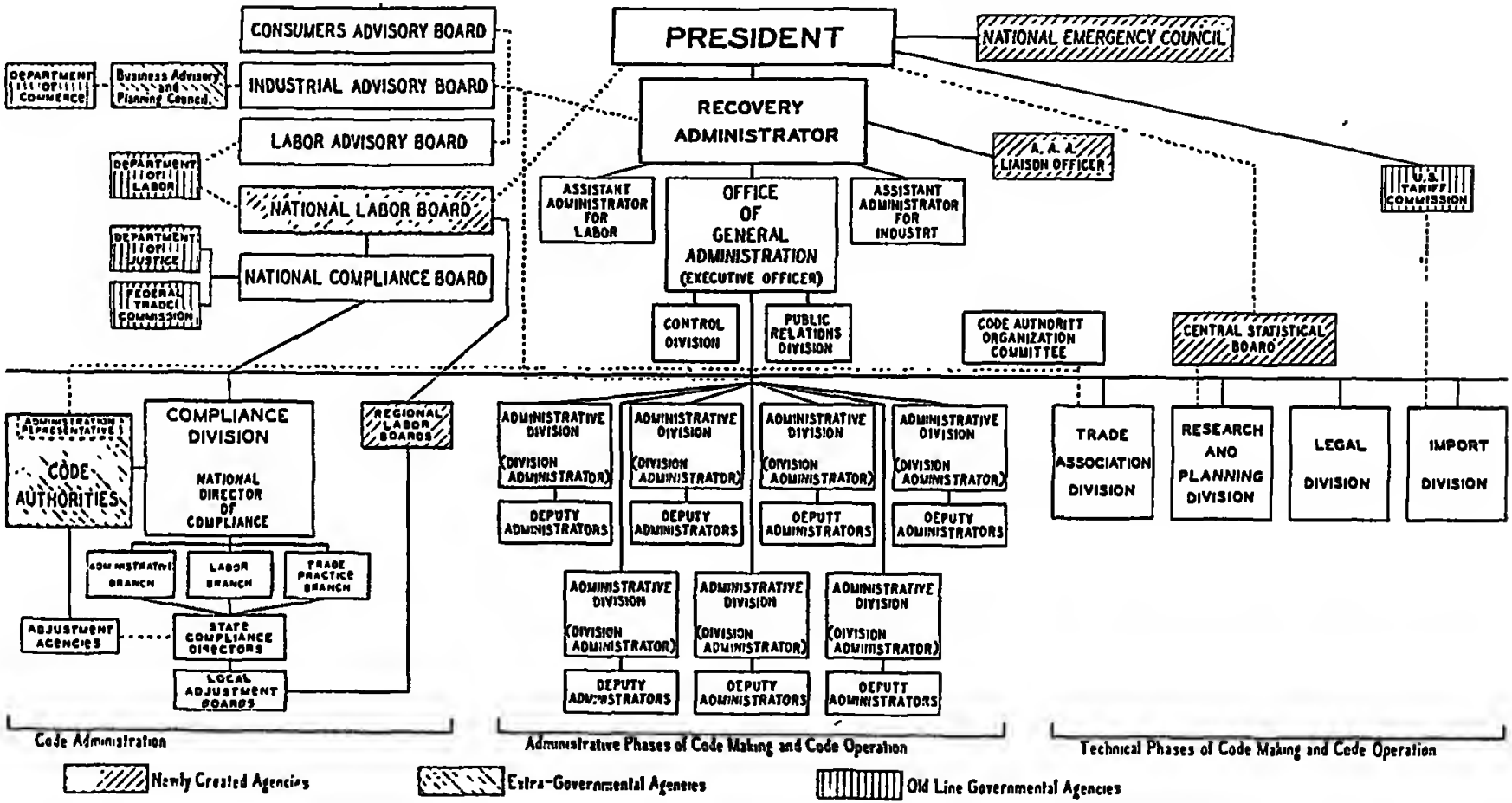
Division II. Machinery, lumber, and metals.

Division III. Chemicals, construction, shoes, leather, and miscellaneous small manufactures.

Early Administrative Organization of the NRA



Present Administrative Organization of the NRA



unit with advisers and technical experts permanently assigned from the advisory boards and technical divisions.

Technical divisions.—The so-called technical divisions are at the right of the charts. At one time all codes under consideration were routed through a central Code Analysis Division for critical inspection, but this procedure was dropped and the division disbanded.

The two most important technical divisions have been the Legal Division and the Research and Planning Division. Each has a numerous personnel and a complex organization of its own. In addition to inspection of pending codes from a legal angle, the Legal Division has numerous other official and unofficial duties, including the research necessary to support the legality of the codes which it has passed upon. The Research and Planning Division engages in a multitude of activities. One section is primarily responsible for the assembling and analysis of factual data upon industries for which codes are pending. This responsibility sometimes carries over into further research and counsel in connection with putting an approved code into effect. Another section is not directly concerned with code-making but engages in various types of activity, such as drawing up systems of statistical reporting for industries, examining the problems of cost accounting, engaging in price studies, and so on.

In practice the two divisions just mentioned are not merely technical, but also advisory. Much of the intellectual initiative and advocacy of policies within the NRA derives from this source.

Division IV. Trades and services, textiles, and clothing.
Division V. Amusements and transportation.
Division. VI. AAA codes.
Division VII. Publications and graphic arts.

The Trade Association Division is concerned with problems of adapting the organization of trade associations to the new exigencies of code administration. Its activities to date have not been extensive except indirectly through its chief who, as head of the Code Authority Organization Committee, has had an important part in setting up the administrative machinery under approved codes.

The Import Division has been set up to make investigations preliminary to the exercise by the President of his power to restrict imports if necessary to effectuate the purposes of the Act.

Advisory boards.—In the upper left-hand corner of the charts will be found the three advisory boards. The Industrial Advisory Board is composed of a rotating membership, named by the Secretary of Commerce from the membership of the Business Advisory and Planning Council (to be mentioned later). As a body it considers questions of NRA policy affecting business interests. It functions as a part of the administrative organization mainly by appointing and instructing special industrial advisers who sit through code negotiations and advise with respect to matters of primary concern to business interests.

Originally, membership on the board was for an indefinite tenure, but later a rotating plan was adopted, ostensibly designed to familiarize a large number of industrialists with the operations of the Recovery Administration. The Administrator has expressed the view that a rotating type of membership applied to deputy and assistant deputy administrators, and to the other advisory boards as well as to the Industrial Advisory Board, will tend to prevent both stagnation and exploitation. By this method he believes that "fresh blood

would constantly flow from industry to government and back to industry again, carrying knowledge and experience in a constant circulation. It is the only way to avoid a bureaucracy, an eventuality that would kill the whole movement." [5] The principle of rotation, however, has been applied only to the Industrial Advisory Board.

The Labor Advisory Board, appointed by the Administrator in collaboration with the Secretary of Labor, considers questions of labor policy and appoints advisers who sit in code negotiations. In some degree it has co-operated with unions in the preparation of their contributions to hearings on pending codes. As codes go into operation it interests itself in questions of policy and procedure with respect to the protection of workers' rights.

The Consumers' Advisory Board is appointed by the Administrator. Like the other advisory boards it appoints advisers who sit through code negotiations. Representing no clearly defined group, it is not quite co-ordinate in function with the other boards. Its activities may perhaps be said to center on opposing the building up under codes of special advantages not counter-balanced by corresponding public benefits. This gives it a special interest in the subject of prices.

The members of the three advisory boards are not resident members of the paid NRA staff. The different boards fix their own procedure as to time and frequency of meetings, to which the members come from their private callings. It is the custom of the Industrial Advisory Board to have half of its members in Washington alternate weeks, so that full meetings of the

[5] Excerpt from speech delivered by the Recovery Administrator on Nov. 11, 1933. See *NRA Release No. 1753.*

board are rare. The work of the boards is partly done through committees, which study and make reports upon special topics of importance to their activities. While the boards are mainly advisory, certain administrative acts require their approval.

Each board has a permanent office and research staff which is on the NRA payroll, working under the chairman who is in constant attendance. There is also a staff of special advisers who serve in connection with pending codes, some of whom are brought in temporarily for advisory work on particular codes.

Other agencies.—The Blue Eagle Division, at the lower left of Chart I, has ceased to exist, having either lost its functions or surrendered them to other agencies. The Compliance Division, at the lower left of the second chart, will be dealt with in Chapter VII.

Various other agencies and persons, some appearing on the second chart and some not, exercise functions which will be passed over here. In connection with the Washington organization of the NRA it must be emphasized that much of the important work, particularly with respect to the formulation of policy, is carried on by groups or committees cutting across divisional lines. Such was the now defunct Policy Committee and such is the Code Authority Organization Committee.

A new type of agency, outside Washington but an integral part of the NRA system, may be mentioned in conclusion. The President has appointed a state director of the National Emergency Council for each state in the Union. On January 31, 1934 these state officers held their first conference in Washington, at which time they received general instructions on various phases of the relief and recovery programs. They were charged with the administration of code com-

pliance as one of their first assignments and instructed in detail by officers of the NRA. It is expected that they will also eventually take over the work of voluntary local boards which have served as administrative agencies for the President's Re-employment Agreement.[6]

II. OTHER NEWLY CREATED GOVERNMENT AGENCIES

The operations of various other government agencies recently created through legislation or by executive order bear directly upon the operations of the NRA. But they do not form integral parts of the Recovery Administration proper since the lines of authority and responsibility for their functioning do not run direct to the Administrator. The National Labor Board, the Central Statistical Board, and the Agricultural Adjustment Administration fall into this group of government agencies.

National Labor Board.—The National Labor Board was appointed by the President[7] on August 5, 1933 to "pass promptly on any case of hardship or dispute that may arise from interpretation or application of the President's Re-employment Agreement." An executive order, issued on December 16, 1933,[8] stated that the National Labor Board "shall continue to adjust all industrial disputes, whether arising out of the interpretation and operation of the President's Re-employ-

[6] At the time of the creation of the National Emergency Council in November it was planned to abolish the voluntary field agencies on December 16. This step, however, was postponed on that date by Executive Order No. 6512, and again on January 16 by Executive Order No. 6561. The latter order provides that voluntary field agencies shall continue in existence until such time as they are notified by the Executive Director of the National Emergency Council that they are to dissolve.

[7] No formal executive order was issued in August.

[8] Executive Order No. 6511.

ment Agreement, or any duly approved code of fair competition, and to compose all conflicts threatening the industrial peace of the country." In carrying out this mandate the board may, however, decline to accept jurisdiction over controversies arising between employees and employers if the complainants have not exhausted all available means of settlement provided by (a) federal law, (b) agreements, or (c) industrial codes. The President further defined the functions of the board in an executive order of February 1, 1934.[9]

The National Labor Board is composed of eleven members—an impartial chairman, five representatives of industry, and five representatives of labor. Stated in broad terms, the operating practice of the board is "to afford disputants in labor controversies the opportunity to meet on common ground with equal representation and with an impartial mediator and resolve differences growing out of the newly defined rights and obligations of employer and employee as defined under the operation of code and re-employment agreement provisions." [10] In practice much of its work has centered on settlement of disputes arising out of Section 7 (a) of the Act over the method of choosing labor's representatives for purposes of collective bargaining.

The exact status of the board in relation to the National Recovery Administration is ill defined. It is an agency created under the Recovery Act, but it is not an integral part of the Recovery Administration. Its membership, except for the impartial chairmen, has been drawn from the Labor and Industrial Advisory Boards, but need not be. While it is not a part of the enforcement machinery of NRA, its work is in some

[9] Executive Order No. 6580.

[10] For fuller statement of the functions of the National Labor Board, see *NRA Release No. 1413*, Oct. 27, 1933, and *No. 3125*, Feb. 4, 1934.

degree complementary to that of the Compliance Division. Its permanent relation to the settlement of labor disputes is yet to be determined, but will presumably be much modified if and when industrial relations boards are extensively set up under approved codes.

The nature of the board's work, dealing in an intimate way with labor controversies in their local setting, has necessitated the establishment of regional labor boards composed of employer and employee representatives and impartial chairmen. Authority is granted to the National Labor Board by the President's order to delegate to these regional boards such power and territorial jurisdiction as it deems necessary to the performance of their regional functions.

Central Statistical Board.—Since the federal government has assumed partnership with industry in planning the course of the industrial and trade activity of the country, it has become necessary materially to expand the available stock of basic data relating to industrial employment, production, prices, sales, and other economic factors. Such data were urgently required as an aid to the Recovery Administration in evaluating the provisions contained in codes of fair competition submitted by industrial and trade groups. For in determining the final disposition of these proposed codes not only is it necessary carefully to analyze the provisions for minimum rates of pay and maximum hours of work, but to pass judgment on price-fixing schemes and proposals for the control of production, both through the limitation of the productive capacity of plants and through the allocation of production quotas to raw material industries. In many cases it has been discovered that the routine statistical data previously collected by various government agencies are not sufficiently com-

prehensive or are not properly classified for the purposes at hand. Either they have been collected by one agency for a particular purpose without sufficient consideration for the broader purposes which the data might serve, or they are obsolete.

It early became apparent that not only for the purposes enumerated above, but also for the purposes of other phases of the Administration's recovery program there was an important need for an agency to co-ordinate the statistical services of the federal government and to adapt these services to the new purposes.

Early last July the Director of the Research and Planning Division of the Recovery Administration organized an advisory committee consisting of representatives of various government statistical agencies. On July 27 this informal organization was superseded by an executive order in which the President, pursuant to authority vested in him by the National Industrial Recovery Act, established a Central Statistical Board, "to formulate standards for and to effect co-ordination of the statistical services of the federal government incident to the purposes of" the Recovery Act. The board is empowered "to appraise and advise upon all schedules of all government agencies engaged in the primary collection of statistics required in carrying out the purposes of the National Industrial Recovery Act, to review plans for tabulation and classification of such statistics, and to promote the co-ordination and improvement of the statistical services involved." [11] The board is composed partly of designated members and partly of elected members. One member has been designated by each of the following: The President and the Secretaries of the Interior, Agriculture, Commerce, and

[11] Executive Order No. 6225, July 27, 1933.

Labor, the Governor of the Federal Reserve Board, the Administrator for National Recovery, and the Committee on Government Statistics and Information Services.[12] These designated members have elected five full and four associate members representing various statistical services of the federal government.

In performing its functions the board does not engage in the collection or analysis of data but acts merely in an advisory capacity. The representative of the Recovery Administration on the board is the chief of its Research and Planning Division. Although the board is limited technically by the executive order creating it to statistics bearing on recovery, it is in a sense a successor to the Federal Statistics Board. The latter board was discontinued last August and its records have been taken over by the Central Statistical Board. Unlike its predecessor, the board has a staff.

Agricultural Adjustment Administration.—Section 8(b) of the Recovery Act empowers the President, in order to avoid any conflicts in the administration of the Agricultural Adjustment Act and the Recovery Act, to delegate to the Secretary of Agriculture any powers granted to the President with respect to trades or industries engaged in the handling of agricultural commodities. An executive order of June 26 delegated to the Secretary of Agriculture all powers vested in the President by Title I of the Act "with respect to trades, industries, and subdivisions thereof, engaged principally in the handling of milk and its products, tobacco and its products, and all foods and foodstuffs, subject to the requirements of Title I." [13] The order left ad-

[12] An advisory committee sponsored by the American Statistical Association and the Social Science Research Council.

[13] Executive Order No. 6182. See also Executive Order No. 6207, July 21, 1933.

ministrative control over provisions relating to hours of labor, rates of pay, and other labor conditions with the Recovery Administration and reserved to the President the right to approve or disapprove any code of fair competition formulated under the provisions of the Recovery Act. This split jurisdiction over the formulation of codes dealing with agricultural commodities necessitated close administrative co-operation at certain points between the NRA and the AAA. More recently a new plan has been put into effect for restoring to the Recovery Administration more extensive jurisdiction over codes for most industries which engage in the processing of agricultural commodities.[14]

III. EXTRA-GOVERNMENT AGENCIES

One newly created agency, the Business Advisory and Planning Council, plays an indirect rôle in the recovery program. This council is composed of prominent business men from various areas of finance, trade, and industry. It was created by the Secretary of Commerce on June 26, 1933 to "assist in directing the work of the department along the most effective and productive lines, at minimum expense to the taxpayer and to co-operate in the selection and development of fundamental long-range studies considered essential to the proper advancement of business." [15]

This portion of the council's function does not bear directly upon the administration of the Recovery Act. But a part of its membership is constantly in contact with the Recovery Administration through the activities of the Industrial Advisory Board.

[14] This plan is too intricate to be explained in a study of this length. See Executive Order No. 6551, Jan. 8, 1934; *NRA Release No. 2645*, Jan. 9, 1934, and *AAA Release No. 1576-34*, Jan. 9, 1934.

[15] *Annual Report of the Secretary of Commerce*, June 30, 1933, p. XXVII.

Another type of extra-government agency is represented by code authorities, to be dealt with at a later point in connection with the administrative features of codes.

IV. OLD-LINE GOVERNMENT AGENCIES

Most of the formerly existing government departments and agencies are concerned in one way or another with the administration of Title I of the Recovery Act. The operations of only five of these agencies, however, bear directly upon the activities of the Recovery Administration: the Departments of Commerce, Labor, and Justice, the Federal Trade Commission, and the United States Tariff Commission.

Only three of these agencies have an organic connection with the administration of the Recovery Act. The Department of Justice and the Federal Trade Commission are the official enforcement agencies under the terms of the Act. Their relation to the compliance plans of the NRA is indicated at a later point. On various aspects of their exact function in the enforcement of codes, there exists some difference of opinion which can only be dissipated as litigated points are settled by the courts. The United States Tariff Commission may be called upon to advise the President under Section 3(e) of the Act, which is designed to control imports which are endangering the effective operation of approved codes and agreements. The Imports Division of the NRA is designed to make preliminary investigations prior to a request by the President for an investigation by the Tariff Commission.

The two other government departments most closely concerned with the activities of the NRA are the Departments of Commerce and Labor. Except indirectly, in connection with the appointment of the Industrial

and Labor Advisory Boards, they have no administrative relationship with the NRA. The facilities of the Department of Commerce have, however, been utilized freely in all phases of the Recovery Administration's work. The department has furnished data, personnel, and floor space to the new agency. Its district offices have been used as temporary headquarters for the field operations of the Recovery Administration. The Secretary of Commerce has served as chairman of the Special Industrial Recovery Board. The Department of Labor has interested itself in the labor aspects of NRA policy and administration largely through the National Labor Board and the Labor Advisory Board.

The Department of State has had a special interest in the foreign trade repercussions of the NRA. The Secretary of the Interior is Administrator of Title II of the Act (Public Works) and of the petroleum code, and advances Public Works Administration funds for the operating expenses of the NRA.

The various divisions and agencies listed in the preceding pages form the organization of the Recovery Administration. They constitute the working parts of the machine which is being used in formulating and administering agreements and codes of fair competition.[16] The manner of operation is best illustrated by giving somewhat detailed consideration to the three major activities to which the Recovery Administration has so far devoted its attention: First, the formulation and administration of the President's Re-employment Agreement; second, the formulation of codes of fair competition; and third, the administration and enforcement of these codes.

[16] As indicated in Chap. II, the President is empowered to employ five distinct types of procedure in effectuating the Act. So far, however, he has found it expedient to use his powers only to the extent of formulating agreements and codes.

CHAPTER V

THE PRESIDENT'S RE-EMPLOYMENT AGREEMENT

The work of the National Recovery Administration was opened with an intensive effort to establish codes of fair competition, particularly for the larger industries of the nation. The first code, that for the cotton textile industry, became effective July 17. Even before this code was approved it had become apparent that it might be desirable to call into play those parts of the Act which made more expeditious action possible. Work on the cotton textile code made it clear that the task of making proper preparation for code hearings was not simple, that much time was involved in giving all parties their day in court, and that hearings raised issues requiring deliberation. It became obvious that if the new law was to be administered in such a way as to improve greatly the unemployment situation before winter more speed was called for than seemed possible in individual code-making.

Moreover, during the first weeks after the passage of the Act the idea of developing "mass purchasing power," through higher wages, seems to have been prominent in the thinking of official circles. To make the effects significantly large appeared to require more or less simultaneous extension of the principle of higher wages to large areas of industry. To accomplish this

quickly also required more expeditious means than those of code-making.

A further complication was that the industries to which codes were first to be applied faced markets that were still depressed. The theory gained headway that, to be able to bear the burden of higher costs, induced by increased wages, the markets in which these industries sold must be made simultaneously stronger. The logic of this view led to a belief in the necessity for simultaneous and concerted action in the raising of wages. Again, the speculative increase in production during the summer, partly stimulated by the prospect of higher costs under the NRA, aroused misgivings lest there be a serious relapse in the autumn, owing to the failure of markets to absorb the increased output.

There was the fear also that prices, which were rising, might advance too rapidly unless under some code influence, and thus tend to neutralize the market stimulation expected from the expenditure of increased wages. Finally, it seems to have been felt that, if industries were subjected to the terms of a general agreement, they would be more prompt in the framing and submitting of their own special codes.

I. PROVISIONS OF THE AGREEMENT

It was presumably for such reasons that President Roosevelt on July 27, 1933 issued a communication addressed "To Every Employer."[1] This communica-

[1] The National Recovery Administration explained the reasons for the President's Re-employment Agreement in these words: "But swift-moving changes require swift action. A rapid rise in prices and mass production is going on. Mass purchasing power must rise as fast. The President has stated his policy to do this by prompt shortening of the work-week and raising of wages for the shorter week. Rules governing hours and wages of labor must be included in every code and codes must continue to come along as fast as possible. But whole industries

tion was the basis of the so-called President's Re-employment Agreement (PRA). The basic points in the agreement (which came to be known as the "blanket code") were (a) the elimination of child labor, (b) the limitation of weekly hours of labor, under varying circumstances, to from 35 to 40 hours, (c) the fixing of minimum wages, under varying circumstances, at from $12 to $15 by the week, and 30 cents to 40 cents by the hour, (d) an "equitable" upward adjustment of wages higher than the minimum, (e) the limitation of price increases to the amount of increased costs, and (f) the support of enterprises which were also parties to the agreement.[2]

Upon acceptance of these provisions the employer bound himself to comply with them between August 1 and December 31, 1933.[3] While the original plan applied to all non-agricultural employers in the country, it was later modified so as to afford relief to small business enterprises in small towns. The pertinent clause of the executive order granting this modification reads as follows:

The provisions of the President's Re-employment Agreement, issued July 27, 1933 shall not be held to apply to employers engaged only locally in retail trade or in local service industries

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must organize and have many conferences before codes can be worked out and that takes a long time. In this national emergency, we cannot delay broad re-employment while we wait for codes. If we are not to have a set-back in our returning prosperity and if we are to take this chance to get out of this depression, we must act more quickly to get more and fatter pay envelopes to our workers. We can do this under Section 4 (a) N. I. R. A. which, in addition to codes, permits trade groups and also individual employers to make AGREEMENTS WITH THE PRESIDENT HIMSELF to do their part in this great effort. We are going to use this additional power." *NRA Bulletin No. 3*, p. 1.

[2] See Appendix D for text of the President's Re-employment Agreement.

[3] On Dec. 19, 1933 Executive Order No. 6515 was issued extending the President's Re-employment Agreement to Apr. 30, 1934.

(and not in a business in or affecting interstate commerce) who do not emply more than five persons and who are located in towns of less than 2,500 population (according to the 1930 federal census) which are not in the immediate trade area of a city of larger population, except so far as such employers who have signed the President's Re-employment Agreement desire to continue to comply with the terms of said agreement after the date of this order; . . .[4]

The distinction between agreements and codes should be clearly grasped. The former deal almost exclusively with hours of work and rates of pay while the latter cover the entire range of industrial and trade activities. Re-employment agreements take the form of bilateral contracts and are binding only on those individual employers who sign the agreements with the President. An approved code, on the other hand, is binding upon all members of the trade or industry embraced by the definition of the trade or industry as stated in the code, even if a minority of these members failed to agree to the terms of the code.

In view of these basic differences it is unfortunate that the two phases of the Recovery Administration's work have not been more clearly distinguished in the public mind. Particularly is this true since the public at large has come into more intimate contact with the Re-employment Agreement phase of the work, and tends to view the more permanent phases of the program dealing with code-making and code administration in the light of its reaction to the "temporary" Re-employment Agreement program. It was in making effective the President's Re-employment Agreement that the Blue Eagle spread its wings over the nation's business, that recovery boards and compliance boards were established, that consumers were given the oppor-

[4] Executive Order No. 6354, Oct. 23, 1933.

tunity of signing statements of co-operation, and that industries, employers, and consumers alike secured the NRA insignia.

With the launching of the program of the President's Re-employment Agreement, an elaborate administrative organization, designated as the Blue Eagle Division, was established almost overnight to effectuate this difficult task of dealing individually with some 5 million employers. Its plan of organization is indicated in the chart on page 46.

The work of the Blue Eagle Division has fallen into three main phases: the Blue Eagle drive; treatment of exceptional cases; enforcement of the re-employment agreements.

II. THE BLUE EAGLE DRIVE

The goal set up for the Blue Eagle drive was to "solve the problem of re-employment through individual agreements with the President" before Labor Day.[5]

The "educational" phases of the Blue Eagle drive were administered by the Director of Publicity and Education, under the Blue Eagle Division. Its activities utilized on an elaborate scale the press, the radio, and a corps of speakers, in short every means of appealing to the patriotism of the people. It involved pressures and appeals similar to those used in "putting over" the Liberty Bond drives during the war. The administrative machinery utilized in the actual process of getting re-employment agreements signed was, however, fairly simple and direct. Between July 27 and 29 the letter carriers delivered to every non-agricultural employer in the country a message from the President ac-

[5] *NRA Bulletin No. 3,* July 20, 1933, p. 2.

companied by a copy of the President's Re-employment Agreement, and a request that he subscribe to its provisions and mail the signed agreement to a district office of the Department of Commerce. In order to induce all employers to become parties to re-employment agreements the consumers of the country were requested to pledge themselves to patronize only employers who had subscribed either to codes of fair competition or to re-employment agreements.

To advise the administration on the progress of the recovery program, a nation-wide organization of voluntary boards and councils was set up. A district recovery board of seven members each was appointed by the President for each of the 26 districts of the Department of Commerce. A state recovery board of nine members was created by executive appointment for each state. To enlist the co-operation of a wide variety of voluntary organizations, the state board organized a state recovery council. This council included, ex-officio, the presiding officers of "any state labor, manufacturing, trade, civil, social service, or welfare association, organization, or club" which applied for membership.

Formidable as appeared the task of supervising some 5 million of the country's employers as well as some 30 million consumers, the Administration found that the really difficult problems centered in the exception, substitution, and enforcement phases of the work.

III. TREATMENT OF EXCEPTIONAL CASES

While convinced of the necessity of placing sweeping wages and hours agreements in effect, the Administration anticipated (a) conditions under which employers would prefer to operate under provisions of proposed codes and (b) special conditions under which

compliance with such generalized provisions as set forth in the President's Agreement would work distinct hardships upon certain employers. In order, therefore, to afford greater justice and fairness, the President's Re-employment Agreement provided for two types of optional treatment. In the first place an individual employer might request the substitution of hours and wages provisions of a proposed code of fair competition for similar provisions of the Re-employment Agreement as soon as a proposed code had been filed with the Recovery Administration.[6]

Substitution of terms of proposed codes.—Originally, petitions for the substitution of proposed code provisions for re-employment provisions were handled by deputy administrators as a corollary to their main function of supervising the process of code formulation. But it was soon discovered that no uniformity of treatment could be secured under this procedure, and on August 7, 1933 the President's Re-employment Agreement Policy Board was created to exercise exclusive control over petitions for substitutions.[7] This board was also empowered to issue official interpretations of the agreement.

The board was composed of five members: (1) the Chairman and representative of the Recovery Administration; (2) a labor representative assigned from the Labor Advisory Board; (3) an industrial representative selected from the Industrial Advisory Board; (4) a legal representative selected from the Legal Division;

[6] President's Re-employment Agreement, Sec. 13.

[7] See *NRA Release No. 217*, Aug. 8, 1933 for detailed statement of functions of President's Re-employment Agreement Policy Board. The board could consider substitutions for paragraphs 2, 3, 4, and 6 only of the agreement.

and (5) an economic adviser selected from the Research and Planning Division.

At the outset, the board narrowly defined its functions by establishing two requirements for all proposed substitutions. In the first place, the provisions of pending codes which petitioners proposed to substitute for paragraphs of the Re-employment Agreement were required to cover the same ground as the paragraphs which they were to replace. In the second place, the substance of the proposed substitutions was required to be within the spirit of the President's Re-employment Agreement, namely, to increase employment and purchasing power approximately to the 1929 level through the process of shortening hours of labor and raising wage rates.[8] Soon, however, the board discovered that very few proposed substitutions met these requirements. It therefore adopted a modified policy which allowed proponents of codes to amend the wages and hours provisions of codes already submitted so as to bring these provisions within the spirit of the agreement.

In order to put this revised policy into operation, the following procedure was established: (1) The industry asking a substitution was requested to file a statement of the shortest work week and the highest wage rate under which it could, in the opinion of its members, continue operations, and to furnish evidence that the application of these provisions would tend to increase the payroll of the industry and trade concerned approximately to the 1929 level. (2) On the basis of an independent statistical analysis (made by the economic adviser to the board) designed to test the claims made by the petitioners, the Policy Board arrived at a decision on the petition. (3) If the application for

[8] See *Instructions of PRA Policy Board to Petitioners.*

substitution was approved the board incorporated the substitutions as proposed into a revised draft of code provisions under consideration and presented it to the petitioner for acceptance and then to the Administrator for final approval. (4) If the board found it advisable to reject the proposed substitution the petition was returned to the petitioner with a notation as to the maximum work week and minimum wage rate which would be acceptable to the board. (5) If the industry concerned found the board proposal acceptable, a revised draft of the proposed code provisions was prepared and submitted to the Administrator for approval.

While the revised procedure of the Policy Board allowed for some deviation from the original narrow definition of its functions as limited strictly to a consideration of substitutions proposed on the basis of provisions contained in pending codes on file in the Control Division, bargaining or negotiation based on interviews and conferences such as characterizes the code process was not allowed. The Policy Board considered that the adoption of such a procedure not only would be inappropriate but would materially retard an operation which depended largely upon expedition for its success.

September 30 was established as the final date for filing petitions for substitutions. Consequently the major work of the board was completed in October. With the creation of the compliance system within the Recovery Administration on October 26, 1933 (see pp. 72, 96 ff). the PRA Policy Board was abolished and its remaining functions were transferred to the Compliance Division.

Exceptions from the provisions of the PRA.—Any individual who wished to sign the agreement but felt that it would work an undue hardship upon his business

might sign it and petition the Administration for exceptions from certain clauses pending investigation of his case by the National Recovery Administration.[9]

For a few weeks petitions for exceptional treatment were forwarded to Washington, to be handled by the Blue Eagle Division.[10] This procedure, however, soon proved inadequate to cope with the volume and importance of the work arising under the exceptional case provision, and on September 12 orders were issued from Washington delegating this function to local compliance boards.

Chairmen of local NRA committees (previously created to facilitate the work of the Blue Eagle drive) were utilized as the nucleus for the organization of local compliance boards. These chairmen were requested to convene a nominating committee composed of individuals representing a cross-section of the economic interests of the community for the purpose of naming six members to the local compliance board.[11]

The composition of the board as specified by the Administration was as follows: (a) two employee representatives, one selected from industrial labor and one from retail or wholesale trade employment; (b) two

[9] The President's Re-employment Agreement, Sec. 14. Under a later ruling, "No exception from paragraphs (1), (8), (10), (11), or (13) of the President's Agreement may be approved and no exception from or statement of an interpretation or understanding of Section 7(a) or Section 10(b) of the National Industrial Recovery Act may be approved." *NRA Bulletin No. 5,* Sept. 12, 1933.

[10] Originally the procedure followed by the Administration in considering such petitions called for approval of the petition, previous to its submission to the Washington office of the Recovery Administration either by a representative trade association of the petitioner's industry, by the local chamber of commerce or some other representative organization designated by the Administration.

[11] Detailed instructions for the creation of local compliance boards are contained in a memorandum from the National Recovery Administrator to NRA local committee chairmen (September 11).

employer representatives, one selected from industrial employers and one from retail or wholesale trade employers; (c) one consumer representative, preferably a woman; and (d) one representative of the legal profession from among lawyers practicing in the community, and in good standing with the state association. The permanent chairman—the seventh member of the board—was then selected by these six members preferably from among the retired leaders of the professional or commercial life of the community. It was the aim of the Recovery Administration in so defining the composition of the local compliance boards to secure groups which would accurately reflect the economic and social attitudes of their respective communities and which would arrive at unbiased decisions on the cases presented for their consideration.[12]

The local boards are voluntary agencies; they receive no federal funds for either salaries or office expenses. They may, however, appeal to local or state employment relief agencies for stenographic and clerical help.[13]

The boards have no final jurisdiction in any matter referred to them; all of their decisions are subject to review and may be reversed by the Recovery Administration. Moreover, they possess no power of enforcement except upon specific instruction from the Recovery Administration. Their operations are limited strictly to matters dealing with the administration of the President's Re-employment Agreement and do not extend to matters arising under codes of fair competition.[14]

[12] On October 18 there were approximately 2,700 local compliance boards in operation.

[13] NRA letter of instructions to local compliance boards, Oct. 21, 1933.

[14] This applies also to petitions for substitutions of proposed code provisions for similar provisions in the agreement. These petitions are presented directly to the Recovery Administration under the procedure discussed above.

The functions delegated by the Recovery Administration to the local compliance boards cover three phases of the President's Agreement program: (1) consideration of petitions for exceptions under paragraph 14 of the agreement; (2) consideration of petitions to operate under union-labor agreements rather than under the hours provisions of the agreement; and (3) consideration of complaints of non-compliance with the agreement.[15]

Petitions of the first type asking exemption from specific provisions which are deemed oppressive may be disposed of by the board in one of three ways.[16] If the board after examination of the facts presented agrees unanimously that the petition is justified, the petitioner is so informed and is allowed to operate under the modified agreement. If, on the other hand, the board agrees *unanimously* that the petition is not justified, the petitioner is notified that his claim for exemption has been disapproved. In either case, however, under the original plan the Recovery Administration was notified of the decision through the district recovery board.[17] All deci-

[15] On Dec. 6, 1933 the President ordered the abolition of all volunteer boards established to facilitate the recovery program and transferred their functions to state and local offices set up under the National Emergency Council to co-ordinate the field work of all federal emergency agencies. Enforcement work under the Re-employment Agreement will be left with local compliance boards until the newly established systems can be put into operation. The procedure described below must, however, be understood to be in a process of progressive obsolescence.

[16] For a detailed description, see *NRA Bulletin No. 5.*

[17] The district recovery boards originally set up in the U. S. Department of Commerce districts to facilitate the work of the Blue Eagle drive were utilized in this connection as a clearing house for exception and compliance cases. That is, the district board saw that all communications between the local boards and the Washington recovery officer were in proper form and were proper subjects for consideration by the Washington office. The functions of these boards have been transferred to the several state directors of the National Emergency Council.

sions of the local compliance boards are subject to reversal by the Recovery Administration, but an attempt is made to minimize such action.

If the board finds it impossible to reach a unanimous decision on a petition, no immediate local decision is made. Under the original plan a record of the board's discussion, together with pertinent data, was forwarded to the Blue Eagle Division of the NRA, where a final decision was given.[18] In the interim, the petitioning employer is permitted to display a *provisional* Blue Eagle indicating that his claim for exception from certain provisions of the agreement is under consideration. In no case is the local board permitted to consider petitions for exceptions from groups of employers; the agreement provides for exceptions only in case of individual hardships.

The second type of exceptional case over which local compliance boards exercise original jurisdiction involves union contracts secured through the process of collective bargaining. If an employer finds that such a contract provides for longer hours than allowed in the President's Agreement and that the labor organization which sponsored the contract will not agree to a modification of its provisions based upon a downward revision of maximum work hours accompanied by an upward revision of wage rates, the employer may petition the local compliance board for permission to operate according to the provisions of the union contract. Three considerations determine whether or not

[18] On Oct. 26, 1933 the Blue Eagle Division was abolished and its functions transferred to the newly established Compliance Division. Correct description of the administrative procedure from October 26 to date will therefore be obtained by substituting *Compliance Division* wherever *Blue Eagle Division* occurs *in this section and the one following.*

the board will give detailed attention to the petition. The contract must be a bona fide one; it must not be subject to termination at will by the employer; and it must have been negotiated prior to the date of the President's Re-employment Agreement. Three avenues of action are open to the board: (1) outright approval or denial of the petition, (2) local mediation, and (3) reference to the National Labor Board at Washington or to one of its regional offices. The third type of action is based on the belief of the Recovery Administration that, even though local mediation has failed, further mediation conducted by a higher tribunal may prove effective. Any action taken by the local board is reported to the Recovery Administration.

IV. ENFORCEMENT OF RE-EMPLOYMENT AGREEMENT

As in the case of petitions for exceptions, the enforcement work of the President's Re-employment Agreement is handled largely through local compliance boards. While the Complaints Section of the Blue Eagle Division (or later the Compliance Division) has final review over matters dealing with non-compliance with the terms of the President's agreement, all such complaints must be originally presented to, and considered by, the local compliance boards.

In dealing with complaints of non-compliance under the terms of the Re-employment Agreement, the procedure of the local compliance boards is briefly as follows. Any individual or concern having occasion to believe that an employer is violating some provision of the agreement may file a complaint to that effect with the local compliance board in his community. If the facts as stated in the complaint constitute a violation of the agreement the board notifies the "accused" em-

ployer that a complaint has been filed and subsequently attempts to secure a promise of immediate compliance through informal explanation and persuasion. Local compliance boards are instructed by the Recovery Administration to exhaust every means of conciliation before resorting to the more formal procedure of hearings before the board. But if the informal discussion fails to obtain compliance, the accused employer is notified that he will be given the opportunity to present his case before the local compliance board.

The powers of the local board with relation to this phase of compliance procedure are very limited. An employer may not be forced to appear before the board. After having appeared voluntarily he may not be forced to answer questions, nor may he be forced to submit records or any other type of information. In short, the entire hearing procedure depends wholly upon the willingness of the accused employer to assist the board in clearing up the case. But if the employer refuses to appear before the board, or after having appeared, refuses to answer pertinent questions, these circumstances are reported by the board to the Complaints Section of the Blue Eagle Division (or later the Compliance Division) at Washington for final decision.

In cases where hearings are actually held, the action to be taken by the board is determined solely by the information developed in the hearings. If it develops that the employer has in reality been complying with the terms of the agreement, the case is dropped and the employer is furnished with a letter of compliance. On the other hand, if the facts indicate that the terms of the agreement have actually been violated, the employer is given the opportunity to signify his intention of altering the conditions which constitute non-com-

pliance. In case the employer refuses to correct these conditions, the board reports all the facts of the case to Washington through the district recovery office and recommends that the proper federal authority be instructed to remove the offending employer's Blue Eagle. In no case does the local compliance board have any authority directly to enforce its decisions; this power rests wholly with the enforcement agencies of the Recovery Administration.[10]

The local compliance boards have occupied a strategic position in the President's Re-employment Agreement program. They originally furnished the actual point of contact of the individual employer with the Recovery Administration. They have been in a position to exercise almost complete control over the granting of exemptions under the agreement. Moreover, the Recovery Administration has been forced to depend largely upon them for creating sentiment which will make enforcement of the agreements possible. To the individual employer, the Recovery Administration and its program are far off, impersonal, and largely abstract. But the local board served at the outset to reduce this abstraction to a reality—one which bore directly upon the every-day business operations of a community. In final analysis, then, the eventual reaction of any community toward the Re-employment Agreement phase of the recovery program has been conditioned largely by the intelligence, effectiveness, and restraint exercised by a local board in giving local interpretation to the objectives of the NRA. It will be recalled that local compliance boards are voluntary organizations, composed largely of individuals engaged in full-time

[10] For a detailed statement of the procedure followed by local compliance boards in dealing with non-compliance cases see *NRA Bulletin No. 5.*

occupations. Not only are they called upon to generate and sustain locally an enthusiasm for an exacting and, at times, unpleasant task, but they are requested to carry on their operations without any financial assistance from the federal government.

In this connection it is significant that on October 14 the Recovery Administration abandoned to a large degree its dependence upon voluntary compliance and substituted penalties for offenders. In the official instructions issued on September 12, 1933 to local compliance boards the legal member of the board was instructed to explain to offending members "that the President's Re-employment Agreement is not a statute to be enforced by law but a voluntary individual covenant." [20] Under this official attitude, non-compliance with the terms of the agreement would result in surrender of the right to display the Blue Eagle. But on October 14, 1933 the President issued an executive order which in effect made the false display of the Blue Eagle or other insignia of the Recovery Administration punishable by fines or imprisonment, or by both.[21]

This shift in the attitude of the Recovery Administration toward enforcement of the Re-employment Agreement was perhaps a natural development. Although the agreement was presumably temporary in character, originally expiring on December 31, 1933, but subsequently extended to April 1934, the Administration no doubt felt that it could not risk the development of widespread non-compliance with the agreement, since such non-compliance might easily become the pattern for public response to the more permanent codes of fair competition.

[20] The same, p. 4.

[21] President's Executive Order No. 6337, Oct. 14, 1933. This order was supplemented by *Rules and Regulations Concerning Display of NRA Emblem* issued by the Recovery Administrator on Oct. 17, 1933. For full text of both see *NRA Release No. 1239*, Oct. 17, 1933.

CHAPTER VI

THE CODE-MAKING PROCESS

Section 3(a) of the Recovery Act provides that the President may, upon application by one or more trade or industrial associations or groups, approve a code of fair competition for the industry or trade represented. While in general the Act defines only the broad objectives to be sought through the operation of codes, it does require all codes to conform with the following restrictions and qualifications.

1. Any association sponsoring a code of fair competition for a trade or an industry must furnish evidence that no inequitable restrictions are imposed upon admission to membership in the association. Moreover, each association must demonstrate that its membership is truly representative of all of the units in the trade or industry which it purports to represent.

2. No code may be so drawn as to eliminate, oppress, or discriminate against small industries.

3. No code may permit monopolies or monopolistic practices.

4. Every code must contain the following provisions relating to the rights and conditions of labor:

a) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted ac-

tivities for the purpose of collective bargaining or other mutual aid or protection; (b) that no employee and no one seeking employment shall be required as a condition of employment to join any company or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (c) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

5. Every code must include such provisions as the President may find necessary "for the protection of consumers, competitors, employees, and others and in furtherance of the public interest."

6. All codes must contain an express provision to the effect that "the President may from time to time cancel or modify any order, approval, license, rule or regulation" issued under Title I of the Act.

All other provisions which eventually find their way into codes of fair competition designed to effectuate the policies of the Recovery Act result from negotiations between the Recovery Administration and representatives of the industry concerned. This procedure is, of course, subject to definite restrictions imposed by the Act and by fixed administrative procedure. The final code presumably represents a mutual agreement of all interests concerned.

Since the type of code agreement provided for in the Recovery Act may cover the entire field of industrial operations, trade practices, and employer-employee relationships, it is only natural to find that voluntary agreements, first between the representatives of competitive groups within the industry itself, and then between representatives of the industry, the general public, and the Recovery Administration, are arrived at only after a long series of routine procedures, investigations, conferences, and hearings. In order to

facilitate this process the Administration has set up a definite procedure to guide both industry and Administration officials in formulating codes.[1]

Every code of fair competition passes through seven main phases from the time it is presented to the Administration by the representative of an industry or trade until the time it is finally approved by the President and returned to the industry to serve as "law merchant" for that industry. These phases of code-making may be labeled as follows:[2] (1) original preparation of code; (2) checking of proposed code for form and mandatory provisions; (3) preliminary conferences and analysis; (4) public hearings; (5) final conferences and analysis; (6) final preparation of code; and (7) President's approval.

Original preparation of code.—Grist for the code mill is supplied by industry—not by the government. "It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself." [3]

In some cases, where no representative trade association is in existence, a new association is formed *ad*

[1] It has already been noted in the discussion of administrative organization that the machinery for formulating codes has been adjusted from time to time in the light of accumulated experience. Since a large portion of the codes approved to date, including those for most of the major industries, were formulated under the administrative procedure prevailing until Oct. 25, 1933, it appears advisable to base the following discussion upon the code-making process as it existed during the period between July and November. The principal change in procedure arises from the establishment of divisional administrators to whom deputy administrators are now directly responsible.

[2] No attempt is made in this discussion to take account of the numerous minor variations in procedure introduced by the various deputy administrators.

[3] *NRA Bulletin No. 2*, p. 2.

hoc. In others, a more or less representative group of members of an industry form themselves into a committee for preparing a code without benefit of a formal trade association. In some cases rival associations within the same industry may both become applicants. In still others the code committee is made up of representatives of two or more associations, or partly of association representatives and partly of persons connected with no association. While, strictly speaking, application is thus not necessarily from an established association, the following description will for the sake of simplicity speak of the applying group as a trade association.

Whenever an association decides to prepare a code of fair competition, it applies to the Control Division of the NRA for the proper blank forms and for general suggestions as to subsequent procedure. While the Recovery Administration, as just indicated, takes no direct responsibility for the original preparation of a code, it will furnish advice and counsel as to the proper form and content of the proposed code if so requested by the trade association.[4]

The application blanks, when filled out and returned to the Control Division, furnish the information required to determine whether or not the association is truly representative of the interests it claims to represent and whether or not it imposes any undue restrictions on membership. This done, the way is cleared for the preliminary drafting of a code.

Although it constitutes only the preliminary step

[4] During the early weeks of code-making in June and July the Control Division was prepared to offer such assistance through a corps of counsellors, or by arranging personal contacts between the trade association representatives and the deputy administrators who eventually were to have charge of the code negotiations in question. But as familiarity with the code procedure spread, such service became progressively less necessary.

in the code process, this first phase should not be assumed to be in any sense an unimportant or easy one. As a matter of fact, for some industries it constitutes one of the most formidable hazards in the code process. Ordinarily the degree of difficulty encountered in obtaining agreement among the competitive interests within an industry or trade upon the provision to be included in the preliminary draft of a proposed code depends upon two factors: (a) The number and character of the competitive units within the trade or industry; and (b) the strength of the trade association or industrial group representing the trade or industry.[5]

As soon as a trade association has formulated a preliminary draft code for its industry the draft is filed with the Control Division. Three supporting documents must be filed with each code: (a) A copy of the constitution and by-laws of the trade association; (b) a letter of transmittal discussing the condition of the industry, and the relation of this condition to the provisions contained in the code; and (c) documentary evidence that the association in fact represents the industry which it purports to represent.

The locale of the conferences which produce the preliminary draft accords with the convenience of industry. Since the Recovery Administration takes no ac-

[5] As an illustration of this point, the automobile industry, with relatively few and highly integrated units, and with a well-established trade association representing the bulk of the productive capacity of the industry, had relatively little difficulty in agreeing upon the provisions to be included in the preliminary draft of a code of fair competition. On the other hand the truck transportation industry, composed of a large number of small, unrelated, and highly competitive units, and without any representative trade association, found it impossible to agree upon any single set of agreements to be incorporated in a code. As a result the code-making process moved much more slowly and with a great deal more friction both in the early and intermediate stages in the latter case than in the former.

tive part in these conferences, negotiations are ordinarily conducted outside of Washington. The preliminary draft of the automobile code was written in Detroit, of the oil code in Chicago, and of the iron and steel code in New York. When the preliminary draft code is filed the scene of code-making shifts to the offices of the Recovery Administration in Washington.

Checking proposed codes.—Upon receipt of a proposed code, the Control Division immediately notifies the deputy administrator who has been assigned to this particular industry, sends him a copy of the preliminary draft, together with the application, charter, and by-laws of the association, and other pertinent data. The deputy administrator then checks the code for physical form, for the inclusion of mandatory provisions, and for general uniformity with the requirements of the law.[6]

The deputy's findings, together with any suggestions for revision of the code as to form, are incorporated in a memorandum which is sent to the Control Division. The Control Division then sends one copy of the preliminary draft of the code as filed, together with a copy of the deputy's report, to each of the following agencies of the Recovery Administration: The Industrial Advisory Board, the Consumers' Advisory Board, the Labor Advisory Board, the Legal Division, and the Research and Planning Division.

In the meantime, the deputy administrator communicates directly to the trade association whatever suggestions he cares to make relative to desirable revisions in the code as filed. At the same time he furnishes the association instructions as to the next step in the proc-

[6] Originally the code-checking functions were performed by the Code Analysis Division, but they were later transferred to the offices of the various deputy administrators.

ess. The trade association thereupon makes the first revision of the code, but this revision in contrast with the preliminary draft is made along lines definitely suggested by the Recovery Administration. The revised code, accompanied by a request for a conference with the deputy administrator in charge, is then returned to the Control Division. This division arranges for the conference; notifies all parties thereof; and distributes the revised code to the deputy administrator and the five agencies listed above. The proposed code is then ready for the third step in code-making.

Preliminary conferences.—The ensuing conferences are informal and private in character. The Recovery Administration is represented by a deputy administrator or an assistant deputy. The trade association presenting the code is represented by a steering committee, of manageable size, selected from its membership. The NRA representative presides as chairman of the meetings. To aid and advise the chairman a staff member is appointed by each of the five specialized agencies of the Recovery Administration listed above. It is the function of each of these individuals to keep before the deputy administrator the point of view of the division which he represents.

This first series of conferences serves three purposes. In the first place it offers the representatives of a trade or industry an opportunity to become acquainted with the detailed objectives of the Recovery Administration and with the methods to be used in achieving those objectives. In the second place it enables the deputy and his assistants to sound out the representatives of industry—to anticipate, to some extent, the tactics which will be used by these representatives in the negotiations which follow. In the third place it gives both the deputy

and the steering committee some preliminary insight into the manner in which the agencies within the NRA itself will eventually line up on the various provisions contained in the proposed code.

It will be observed that the deputy administrator occupies at this stage of code-making a position of great strategic importance. He must deal not only with conflicting interests within the industry itself, but with the possibly conflicting views of the industrial, labor, and consumer advisers. At the same time he must aid in the formulation of a code which will stimulate recovery in the industry and yet keep within the limitations of the Recovery Act.

In some cases drastic action on the part of the deputy administrator is required at this stage of the code-making process. If competing trade associations which have presented codes with widely varying provisions cannot mutually agree upon a single code, it may be necessary to refuse to negotiate further with the individual associations. In this contingency the only avenue open to the industrial or trade groups is to form a new or amalgamated association which will be truly representative of their interests, and to reopen negotiations on the basis of a single code.[7]

[7] This situation has arisen in a number of cases. Two examples serve to illustrate the point. Some 30 codes of fair competition were presented to the Administration by various interests purporting to represent the coal-mining industry. The process of combining these various proposals into a single code, acceptable to all interests, presented an extremely difficult task for the Administration; one which required a long series of conferences, bargaining, and compromises, both on the part of the Administration and the industry. In the case of the trucking industry, two competing associations filed codes. At the end of the first series of conferences between the deputy administrator and the associations, the Administration refused to negotiate further on the basis of separate codes and instructed the associations to pool their efforts and present a single code. When this was accomplished, negotiations were reopened.

In cases where no such drastic action is required, the deputy administrator, in conference with the steering committee of the association, makes the changes in the prepared code which he and his technical advisers deem necessary in order to make the code acceptable to the Administration for further negotiation.

The weight of influence brought to bear upon the code process at this stage by the advisory boards and technical divisions depends largely upon the individual capacities of their representatives assigned to the particular code. If the individual has intimate knowledge of conditions in the industry under consideration, it is only natural that his influence will be felt in the direction given to the code process during the informal conference phase. Attitudes, both of the deputy administrator and industry representatives, are more plastic at this stage than during the later periods when issues have become more clearly defined.

When the second revision is finally agreed upon, the code is presented by the steering committee to the trade association for approval. As soon as the trade association is ready to reopen discussions it files an application for a public hearing with the Control Division.

In the meantime the deputy administrator determines the progress being made by the advisory boards and the technical divisions in analyzing the revised code. When satisfied that these agencies have had sufficient time to prepare whatever evidence they may desire to furnish, the deputy notifies the Executive Office that he is prepared to hold public hearings on the code.[8]

[8] At the same time the Public Relations Division is notified by the deputy administrator of any material in connection with the code negotiations suitable for publicity matter. Both the deputy administrator and the trade association are given the opportunity to check the publicity release prepared by the Public Relations Division.

Public hearings.—Detailed arrangements for the public hearings are made by the Executive Office; the proposed code is published; the date of the hearing is set; the place assigned; and the industry and the various interested divisions of the NRA are notified.[9]

The hearings are conducted on a formal basis and are presided over by the deputy or assistant deputy administrator in charge of the code. He is ordinarily assisted by members of the three advisory boards or by technical advisers assigned by these boards, and at times by representatives from the Research and Planning Division and the Legal Division. Any person, whether representing a labor, industrial, or consumer interest, is permitted to appear at the public hearing merely by complying with a few simple requirements. Requests to be heard must be filed at least a day before the hearing date and must include: (1) A statement of the person or groups represented by the individual desiring to testify; (2) a simple statement without argument proposing either (a) to eliminate a specific provision of the code, (b) to modify a specific provision of the code, or (c) to add a new provision.[10]

The procedure to be followed and the objectives to be attained at public hearings were thus defined by Donald R. Richberg, general counsel for the National Recovery Administration, at the time of the first hearing on the cotton textile code:[11]

. . . these [public hearings] are not judicial investigations

[9] Notice of the public hearing is furnished to all members of the industry concerned through publication in every important trade journal and newspaper.

[10] In actual practice, however, these requirements are modified to some extent. It is not uncommon for the deputy administrator to allow the presentation of testimony by individuals who have failed for some reason or other to comply with the prescribed procedure.

[11] *NRA Release,* June 27, 1933 (outline of procedure, unnumbered.)

nor, strictly speaking, legislative investigations, but rather in the nature of administrative inquiries for the purpose of adequately advising the Administration of the National Recovery Act of the facts upon which the exercise of administrative authority must be predicated. . . .

No representative of a private interest favoring or opposing a code has any legal right to control or direct the presentation of evidence or the procedure in a public hearing, which will be subject to the sole control of the deputy administrator in charge, acting in conformity with any general regulations or with specific instructions of the Administrator. It will, however, be the purpose of the deputy administrator to give to all persons interested an adequate opportunity for the presentation of evidence in support of a code, or any objections to proposed code provisions, or any suggested modifications thereof, or additions thereto. . . .

These hearings will not be appropriate for the presentation of arguments upon issues of law. If any party in interest desires to raise any issue of law in connection with a proposed code of fair competition, he may file a written argument thereon with the deputy administrator. . . .

The duration of hearings depends entirely upon the amount of evidence to be introduced; some last only a few hours while others continue for several days. Public hearings on the code for the storage battery industry required only two hours, while those for the retail trade code required several days. At the termination of the hearings, notice is given that all briefs, in order to receive consideration, must be submitted within 48 hours. The code is then ready to enter its fifth phase, that of final conference and quantitative analysis.

The public hearings are the most conspicuous but not the most important part of the code-making process. While they serve as a convenient means of getting material into the record, rarely do they bring out any significant evidence which has not already been developed or which would not otherwise come to the attention of the Recovery Administration. On the other

hand, it does bring some of the clashes of interests—usually the milder ones—out into the open where the public may see. Moreover, it serves as a forum in which all interests whether major or minor may plead their cause—without discrimination—and merely for the asking. Then, too, the process serves to reassure the public mind that the NRA is making every effort to give a hearing to the small as well as the large interests.

Post-hearing analysis and conferences.—Upon the completion of the public hearings, the deputy reopens informal negotiations with the steering committee representing the industry. In the course of these post-hearing conferences the deputy administrator attempts to obtain the consent of the code committee to adjustments of those provisions against which valid objections were registered by various interests at the public hearings. In some instances, these discussions continue for weeks, depending on the volume and character of objections raised against the code at the hearings.

In the meantime ordinarily the Research and Planning Division prepares a formal report on the proposed code, basing its analysis on all of the evidence accumulated throughout the code process, together with whatever information and advice is obtainable from other government agencies and from outside specialists.

As soon as the deputy is able to secure the approval of the representatives of the industry to code provisions revised along lines which he is willing to accept, he submits the latest draft to the various advisory boards and technical divisions for their final opinions in writing. The deputy administrator in making his own written report on the proposed code to the Administrator must take cognizance of formal disapproval of the code or any of its provisions as expressed

in the written report submitted by any one of the advisory and technical boards. But his final approval of the code does not depend upon securing approval from the advisory boards and technical divisions. The written report on the proposed code submitted by the deputy administrator to the Recovery Administrator is, however, accompanied by written reports from the Industrial Advisory Board, the Consumers' Advisory Board, the Labor Advisory Board, the Legal Division, and the Research and Planning Division.[12]

Final preparation of code.—If the Recovery Administrator finds, after analyzing the reports of the deputy administrator and those of the advisory boards and the technical divisions, that the code as a whole or in part is unsatisfactory, he may make further revisions and re-submit it to the association for approval. This constitutes the last step in the code process in which the representatives of industry actively participate. Serious difficulty is often encountered in making final adjustments.

President's approval.—Having secured the association's approval, the fourth revision of the proposed code is submitted to the President by the Recovery Administrator. The code so submitted is accompanied by the following documents: (a) the Administrator's report to the President; (b) the report of the deputy administrator to the Administrator; (c) the transcript of the record of the public hearings on the code; (d) the statistical analysis made by the Research and Planning Division; and (e) the statement of procedure followed in formulating the code. If, on the basis of this material, the President finds that the association pre-

[12] Under the revised office procedure the code accompanied by the various reports is submitted to the division administrator for approval before it reaches the Recovery Administrator.

senting the code imposes no inequitable restrictions on membership and that it is truly representative of the groups which it claims to represent; that the provisions of the code are not designed to promote monopoly and that they will not operate to oppress or eliminate small enterprise; and that the operation of the proposed code will tend to effectuate the declared purposes of the Recovery Act, the President approves it and the code-making process is complete.

If the President finds that any of these requirements are violated by provisions of the code he may either disapprove the code in its entirety or make his approval subject to certain conditions and interpretations. In either case negotiations with the industry are reopened. The code of fair competition for the cotton textile industry serves as an illustration. The President made his approval of the proposed code subject to 13 interpretations and conditions. Six of these were later accepted by the association, six were made integral parts of the code in the form of amendments, and one condition was subsequently removed by the President by executive order. (See Appendix E.)

During the entire period from the time a code is originally presented to the Recovery Administration until the time the President gives it his final approval, the representatives of industry participate in one degree or another in the process. This participation is, however, less intimate and less effective during the final stage of presidential scrutiny and approval than in any other.

Under a strict interpretation of the law, amendments attached by the President as conditions to his approval may be imposed without the consent of the association presenting the code, with the same force

and effect as any of the provisions inserted through mutual agreement. As a matter of practical procedure, however, and in order to preserve the spirit of co-operation between industry and the NRA, it has been the policy of the President to obtain the assent of the industrial or trade association to the amendments which he has attached to codes.

It should not be assumed from this descriptive recital of the stages through which a code passes in the course of formulation that the process itself is a purely routine and mechanical one. On the contrary it is an intensely human and at times a dramatic proceeding. Since the beginning of the drive to codify industrial and trade operations and relationships, Washington has become the industrial as well as the political capital of the nation. Negotiations dealing with the very vitals of industrial and trade activity now center in the Recovery Administration offices. With the stakes amounting in some cases to survival itself, either of special interest, invested capital, or administration policy, it is not surprising that the process of code-making has assumed a dramatic character at times and at other times has become entangled in a maze of bargains and compromises. Even where the element of immediate survival was not present, the struggle of each separate interest to secure what was conceived to be its individual rights under the law, and of some to squeeze a special advantage here and there, served to vitalize the business of making codes.

Amendments and modifications.—Under the law all members of an industry must comply with the terms of an approved code of fair competition. But any individual, firm, or corporation not satisfied with the terms of a code may endeavor to secure its amendment. If

the code is amended, the procedure is the same as that described above.

Under certain circumstances, a stay of application may be sought. Regulations for handling such applications have been prescribed by the President as follows:

Any code of fair competition approved by me shall be deemed in full force and effect on the effective date as stated in the code; but after the approval of a code and as an incident to the immediate enforcement thereof, hearings may be given by the Administrator or his designated representative to persons (hereby defined to include natural persons, partnerships, associations or corporations) who have not in person or by a representative participated in establishing or consenting to a code, but who are directly affected thereby, and who claim that applications of the code in particular instances are unjust to them and who apply for an exception to, or exemption from, or modification of the code. Such persons so applying, within ten days after the effective date of the code, shall be given an opportunity for a hearing and determination of the issues raised prior to incurring any liability to enforcement of the code, and the Administrator shall, if justice requires, stay the application of the code to all similarly affected pending a determination by me [the President] of the issues raised.[13]

[13] Executive Order No. 6205-B, July 15, 1933.

CHAPTER VII

ADMINISTRATION AND ENFORCEMENT OF CODES

Any survey of the machinery set up for the administration and enforcement of codes of fair competition must take into account two fundamental facts: First, that the National Industrial Recovery Act was passed as temporary emergency legislation; and second, that the entire recovery program is declaredly experimental in character. By its terms the Act expires two years after the date of enactment. The experimental nature of NRA activity has been repeatedly emphasized by both the President and General Johnson. No one, therefore, can say at this time how long these codes of fair competition will remain in effect; into what form the administrative agencies will ultimately develop; who will ultimately exercise the powers of enforcement if they are not terminated at the date indicated in the law; or whether these powers will rest with similar agencies for all industries. At the present stage of development all the administrative and enforcement plans for approved codes are in such a state of flux that any detailed statement about them is apt to become rapidly obsolete. They are therefore dealt with in the following pages in exceedingly summary fashion.

I. ROUTINE ADMINISTRATION

The routine administration of the terms of a code of fair competition is not a function of the Recovery

Administration. For that purpose each code provides for a code authority.[1] The code authority is usually composed of members of the industry, but includes in its membership one or more government representatives who have no direct voting power. The composition of this agency varies from code to code. In some cases a well-established trade association is designated to serve for an industry or trade group[2] while in other cases the conditions prevailing within an industry require the creation of a new and sometimes complex organization to serve as the supervisory agency for the code.

It is impossible to give a generalized description of the structure of a code authority, since no uniform pattern was followed in writing the administrative section of codes. Thus the number of forms is almost as great as the number of codes. In numerous codes, subordinate to national code authorities there are regional code authorities, and in some instances a further delegation of function to some sort of local authority. Another form of subordinate authority is that set up for each of the several branches of an industry which are subject to the same code.[3] These variations in the structure of the administrative organization, though in part dictated by chance circumstances, commonly derive

[1] Various names are found for this agency in the different codes. "Code Authority" is the one most frequently found, and in practice is now applied to all of them.

[2] To illustrate, the National Automobile Chamber of Commerce was designated to act as the code authority for the automobile industry code, and the board of directors of the Iron and Steel Institute was named to act as the code authority for the steel industry code.

[3] Striking examples of complex structure are to be found in the bituminous coal and lumber codes. The ice code has national, divisional and local bodies. The rubber code has subordinate agencies for different branches of the industry. See p. 148 for lumber code.

from the peculiar structure and market organization of the several industries.

The actual responsibility of a national code authority does not begin immediately upon the approval of a code. Thereafter, unless the authority is made up of the directors of a trade association, the industry members have to be selected according to the plan specified and the Administration members have to be appointed. There is then a routine procedure within the Recovery Administration for checking whether the authority is "regular" in every respect. Only after definite authorization by the Administrator can the performance of functions begin, which may be weeks or even months subsequent to the approval of a code.

The functions of code authorities vary with differences in code provisions. Where price fixing is authorized, the authority is the administering body. Similarly, the drawing up of systems of uniform cost accounting, the establishment of the mechanism of open-price reporting, and the collection of statistical data, wherever required by codes, become routine duties of the authority. In effect, it becomes the supervisory and planning agency for the industry, subject to the limitation that many of its acts require the approval of the Administrator, and any of them may be vetoed by him or his representative on the code authority.

It is assumed that in practice the routine functions will be largely delegated to other agencies. In particular it is expected that if and when there exists a well-established trade association in the industry, it will perform most of them. Indeed, it seems probable that the chief executive officer of a code authority and of a trade association will commonly be the same person.

In the responsibility of code authorities for studying

and planning for their industries lie many of the interesting and unexplored potentialities of the NRA program. The severe limitations upon their power indicates, however, that the Administration in conferring "self-government" upon industry is doing so haltingly and with striking reservations.[4] At least in the early phases of the administration of a code, the NRA retains a considerable degree of oversight. The Administration member of a code authority, though non-voting, is in a position to be its most important member. He is made responsible to the Administration for the correctness of the organization and procedure, and to him is delegated (with reservations) the power to veto acts of the authority.[5]

II. COMPLIANCE AND ENFORCEMENT

A code authority plays a part in seeing that the terms of a code are observed by the members of the industry subject to it. Compliance is, however, a function for which the Recovery Administration retains primary responsibility and in which it merely assigns to code authorities a particular part. The administrative mechanism for effecting compliance is not fully developed and administrative experience is largely lacking. A relatively clear picture of the proposed types of enforcement procedure can, however, be secured from a brief description of the principal agencies.

[4] A considerable body of experience is becoming available which illustrates both the administrative procedure developed by code authorities and the difficulties encountered by them in the attempted performance of their functions. Any exploration of that field would, however, necessitate going into the provisions of codes in a degree beyond the present purpose.

[5] For the responsibilities of Administration representatives on code authorities, see *NRA Release No. 2251*, Dec. 15, 1933. For routine functions of code authorities, see *Information for Code Authorities, First Release*, Jan. 22, 1934.

The setting for the enforcement problem is seen in the fact that neither the NRA nor any agency established by it has any legal power to coerce any business enterprise into complying with the terms of a code. All its elaborate mechanism of compliance is therefore designed, first, to establish the fact of violation of a code, and second, to "persuade" the violator to mend his ways and to "adjust" complaints. Only at the end of the procedure is the case passed on to the Department of Justice or the Federal Trade Commission for the exercise of the government's power to coerce. To sum the matter up, the violator of a code is violating the law, but the Recovery Administration has no power to enforce the law. The word "compliance" is not therefore a mere euphemism for "enforcement."

The criminal penalties in the law are found in the form of fines for violations of codes of fair competition, for violation of certain license requirements, and for violation of rules and regulations prescribed by the President. It is presumably, therefore, the duty of United States attorneys to bring suit against such violators, as in the case of any violation of federal criminal law. This point will be reverted to in connection with the NRA compliance plan.[6]

Further coercive means are provided. District courts are given authority to enjoin violations of codes, and United States district attorneys, under the direction of the Attorney General, are instructed to institute proceedings in equity for the purpose of securing injunctions.[7] The prevailing view on this point is that the courts will entertain only injunction suits brought by federal attorneys, though some attorneys are prepared

[6] For criminal penalties in the Act, see Secs. 3(b), 4(b), and 10(a).
[7] Sec. 3(c) of the Act.

to argue that the law permits private injunction suits. In the latter case the scope of the enforcement procedure would be tremendously extended.

Since violations of codes are made "unfair methods of competition" within the meaning of the Federal Trade Commission Act, the commission is given a direct enforcement function.[8] This can only be carried out through the somewhat complicated procedure of the commission, which need not be described here in detail. The procedure involves investigations and hearings, and results in an order to "cease and desist" from the practice under question. Appeal from such an order may be made to the courts, or the commission may apply to the courts for the enforcement of an order not voluntarily obeyed.

It is not, however, the intention of the Recovery Administration that compliance to the terms of codes be commonly effected through the use of coercive powers. The philosophy now predominating is that of "industrial self-government," [9] and the purpose is that every opportunity be given to the administrative agencies of the various codes to bring about voluntary compliance. In addition the Recovery Administration is setting up further machinery in its own organization for promoting voluntary compliance. The NRA itself, therefore, contemplates sending cases of violation to the Department of Justice or the Federal Trade Commission only in instances where its own devices have failed.

Violations of codes may be roughly divided into two

[8] Sec. 3(b) of the Act.

[9] For policy on this point, see statements by the Administrator, *NRA Release No. 1847,* Nov. 22, 1933; by Division Administrator Malcolm Muir, *NRA Release No. 1963,* Nov. 28, 1933; and by National Compliance Director William H. Davis, *NRA Release No. 2115,* Dec. 6, 1933.

principal categories; violations of trade practice provisions, and violations of labor provisions. Each type may be handled in more than one way. The distribution of compliance functions as between industry agencies and NRA agencies may vary from industry to industry, depending upon how satisfactorily the various industries prepare themselves to discharge these functions. Each industry is encouraged to set up appropriate agencies, and when it does so the NRA compliance agencies will deal with only such cases of violation as the industry agencies are unable to settle. On the other hand, since the NRA has a responsibility for seeing that all codes are enforced, it is setting up a complete alternative procedure through which to deal with violations in industries failing to set up a satisfactory compliance procedure.

At present (February 15, 1934) the NRA is partially organized, through its Compliance Division and subordinate agencies, to engage in compliance work. A large fraction of the code authorities under approved codes have not yet fully qualified for the exercise of this function. The compliance plans as hereafter described are therefore mainly in the nature of paper plans. The true contours of compliance procedure will be incapable of description until industry after industry has grappled with the problems presented.[10]

Industrial adjustment agencies.—It is expected that each national code authority will build up a more or less nation-wide organization for the administration of its code. Such organizations will presumably vary in size and character in accordance with the needs of each particular industry. The Recovery Administration suggests that a national code authority may very well

[10] Suggested procedures are outlined in *NRA Bulletin No. 7.*

function through three principal committees: a trade practice complaints committee, a labor complaints committee, and a labor disputes committee.

The NRA specifications for the personnel of a trade practice complaints committee are that " its members should be representative of different groups and different interests in the industry, and should be persons of high repute for character, intelligence, and fair-mindedness." The suggestion proceeds:

> As this committee will have important responsibilities it should be small enough to function actively, and its members should be persons who are free to give to the committee as much time as its work may require. The committee should have a legal adviser (unless one of its members is qualified to act as legal adviser and assumes the obligation to do so) and an executive secretary who will be charged with the responsibility for all routine correspondence and records. The Administration member of the code authority will be a member of the committee without vote but with a veto, subject to review by NRA. He will be responsible to NRA for the proper functioning of the committee.[11]

These committees may be looked upon as operating heads of divisions. It is expected that each such committee will build up such an organization of subordinate agencies as is needed in each particular instance. For example, the trade practice complaints committee for one national code authority may find that its subordinate administrative units can best be organized on a territorial basis, utilizing regional and local agencies. The same committee for another authority may find, however, that it can operate most effectively by organizing its subordinate agencies to correspond with certain broad divisions in the industry.

Labor complaint committees and labor disputes committees are not intended to be subordinate offshoots of

code authorities in the same sense that the trade practice complaints committees are. With reference to them, it is suggested that "an approved organization of such a committee would be one having an equal number of representatives of employers and employees, who would choose an additional member as chairman. The representatives of the employers may be appointed by the code authority subject to the approval of the NRA. The representatives of the employees should be chosen in such a manner that all employees in the industry may be represented as fairly as possible."

The term "labor complaint" refers to an alleged violation of the labor provisions of a code. The term "labor dispute" refers to a situation in which a strike or lock-out exists or is threatened, or to a complaint which, because it primarily involves Section 7 (a) of the Act, may lead to a labor dispute. It is expected that in some instances a single committee will be responsible for both types of labor question. The official designation for such a committee is "industrial relations committee."

The National Recovery Administration suggests further that in some cases a national code authority may wish to foster these industrial adjustment agencies for certain divisions of the industry or for certain parts of the country and leave the administration of the code for other divisions of the industry or for other geographic regions in the hands of NRA agencies. There is a further expectation that some industries will be appropriately organized for coping with trade practice complaints, but not with labor complaints. In such cases, the latter would be taken up directly by subordinate NRA agencies and carried through a compliance procedure entirely divorced from the organized

agencies of the industry. All industrial adjustment agencies created by a national code authority must be approved by the National Recovery Administration before they are allowed to take part in governing the industry. Also, it is important to note that any code authority which desires to set up a labor disputes committee must make such committee "subject to any regulations which may be issued by the National Labor Board or the Administrator."

Public adjustment agencies.—Violation cases in industries not organized properly for compliance functions are handled through a group of agencies which are subordinate parts of the NRA. The central figures in this procedure are the state directors of the National Emergency Council. At an earlier point it was stated that the National Emergency Council was created by executive order to co-ordinate the recovery and relief programs throughout the country, and that a state director has been appointed by the President for each state. A few states have branch offices. These state directors of the Emergency Council will co-operate with the National Compliance Director and the National Compliance Board of the Recovery Administration. Each state office will have a labor compliance officer, and a trade practice compliance officer. These men will be appointed by the National Recovery Administration.

To investigate disputed questions of fact each state director will be given the assistance of field adjusters as needed. These men will be either National Recovery Administration employees or employees of existing state and federal government agencies which have established co-operative relations with the state directors of the National Emergency Council.

For the time being the state directors will depend

upon their own organization and upon the field adjusters to handle all complaints of code violation. When and as needed they may expand their organizations to include local boards or agencies.[12]

In addition to the agencies mentioned it is contemplated that one or more state adjustment boards will be created in each state to assist the state directors in the administration of codes of fair competition. The personnel of these boards will "be composed of an equal number of members (approved by NRA) representative of employees and of employers respectively, and a chairman representative of the public agreed upon by the other members, to be appointed by the President." [13]

These boards will be essentially boards of review only. They can exercise no powers of administration or enforcement of codes. They will make reports under two sets of circumstances. They may consider questions of code compliance placed before them by a state director of the National Emergency Council for an opinion. Or, upon the request of a complainant, they may review a complaint which has been previously submitted to a state director. The findings of these state adjustment boards will be set forth in the form of recommendations and will be presumably acted upon by the state director, or, if the circumstances require it, be referred to the National Compliance Director of the NRA.

The National Labor Board has a specialized function for the settlement of labor disputes, and its activities may be expected to become somewhat intertwined

[12] These boards, allied with the National Emergency Council, are not to be confused with the local compliance boards, which functioned as voluntary agencies for adjusting complaints of violation of the President's Re-employment Agreement, and the duties of which are being transferred to the state directors.

[13] *NRA Bulletin No. 7.*

with the activities of the industry and public agencies concerned with labor complaints and labor disputes. No attempt will, however, be made to detail its activities here.

Active supervision over the whole compliance procedure is exercised by the National Compliance Director, who is head of the Compliance Division, one of the integral operating divisions of the NRA at Washington. It has been his task to devise the system, and he is further charged with effecting and supervising its operation. In addition he is, so to speak, one of the stages in the process, since all cases not settled by industry or local agencies further down are passed on to him. The next higher agency to which compliance cases may go is the National Compliance Board, made up of the National Compliance Director and one member each from the Industrial Advisory Board and the Labor Advisory Board. Above this board is the Administrator, through whom alone cases may be referred to the Attorney General or the Federal Trade Commission for coercive legal enforcement.

Compliance procedure.—The relationships of the agencies described above may be made clearer by presenting the routing of a case under three alternative procedures, as officially suggested.

The first of these represents the situation where a code authority is fully authorized to deal with trade practice complaints, and has set up an industrial adjustment agency for that purpose. The complainant is expected to file his complaint directly with the agency, or, if such exist, with a subdivisional agency.[14] As

[14] Even though the national code authority has power to handle complaints, the complainant may file his complaint with the state director of the National Emergency Council, if he believes the code authority is "dominated by hostile or monopolistic interests."

soon as an industrial adjustment agency receives a complaint it is the duty of the agency "to inform the respondent of the nature of the complaint, explain the part of the code which it is claimed he is violating, and ask him for a statement of his position." If violation is admitted but evidence shows present compliance and redress of past wrongs, the case is considered as adjusted.

If the alleged violator denies the facts, raises a point of law on the interpretation of the code, or fails to convince the adjustment agency that he is complying with the terms of the code, he will be invited to appear at the office of the industrial adjustment agency and discuss his case. If the principal issue in the case is one of fact, the industrial adjustment agency may use a field adjuster to investigate the case and report his findings. The adjuster may be either its own employee or an NRA field adjuster in the service of the state director of the National Emergency Council.

If the industrial adjustment agency with which the complaint is filed finds it impossible to dispose of the case, it is to forward the complaint and records, with a report, to the next higher adjustment agency. If the complaint finally reaches the national code authority and it cannot effect a settlement, the case will be turned over to the National Compliance Director. The procedure need not be as complicated as this account indicates, since a national code authority, if convinced of the fact of violation, may cause any case to be transmitted forthwith to the NRA.

If an unadjusted complaint is forwarded to the National Compliance Director in Washington, it will be subject to the following procedure:

1. *National Compliance Director.* When an unadjusted complaint is referred to the National Compliance Director he

will take such action as he may deem advisable. If he is unable to adjust the complaint, or feels that he should not make further attempts at adjustment, he will refer the case to the National Compliance Board.

2. National Compliance Board. Upon the reference of a complaint, with reports and recommendations thereon, to the National Compliance Board, that board may decide to: (a) Undertake further attempts to reach an adjustment; (b) call a public hearing on the case to be held in Washington or locally; (c) remove the Blue Eagle of the respondent and give publicity to this fact; (d) recommend to the Administrator that the case be referred for appropriate action to an enforcement agency of the government, the Department of Justice, or the Federal Trade Commission. When a complaint is referred to one of these agencies, it may make further investigations or it may take appropriate legal action of a civil or criminal nature.[15]

A second illustration may be drawn from the situation in which an industry is not organized to perform compliance functions, and in which therefore public agencies handle the case all the way. In its essential aspects, the early procedure is exactly like that under industrial adjustment agencies, except that complaints are to be filed at the state or branch office of the state director of the National Emergency Council. The alleged violator is informed of the complaint and asked for a statement. If he fails to convince the trade practice compliance officer (or in labor complaints the labor compliance officer) that he is living up to the terms of the code, he will be invited to discuss the case with the state director.

If the conversation with the state director does not result in a settlement of the case, the director will then take one or both of two actions. First, he may have the facts investigated by a field adjuster. Second, if the findings of the field adjuster do not dispose of the case,

[15] *NRA Bulletin No. 7*, p. 18.

the state director may submit it to the state adjustment board. The case may also be referred to this board upon request of either the complainant or the respondent. The state adjustment board is essentially a board of review only and will limit its activities to recommendations on the case. If, upon receipt of the board's findings, the state director is still unable to adjust the case, he will submit it to the National Compliance Director. When a complaint is submitted to the National Compliance Director it follows the same procedure as a case coming up from code authorities.

The whole procedure may be cut short whenever the state director believes that the respondent is deliberately violating the code. In that event he may immediately refer the entire record in the case to the National Compliance Director without following the steps outlined above.

A third illustration may be made of complaints which are handled jointly by a national code authority and the state director of the National Emergency Council. They arise in industries where the Recovery Administration feels uncertain of the ability of the industry to govern itself. If the deputy administrator believes that a national code authority or its subordinate agencies, while not competent as yet to be given full responsibility for the administration of some provisions of the code, is properly organized for certain types of administration, he may, as a means of stimulating further development of machinery for industrial self-government, advise the National Compliance Director to turn over specified types of complaints to the code authority "on reference."

The procedure is as follows: The National Compliance Director of the NRA informs all state direc-

tors of the Emergency Council as to which code authorities are authorized to handle complaints *on reference*. When a complaint arises, it is filed with the local government adjustment agency if such an agency has been set up for the industry, or, if not, with the state director.

The state director will transmit the complaint to the proper industrial adjustment agency *on reference* with a request that the agency return a progress report on the case. If the case is not disposed of in a satisfactory manner or in a reasonable time, the state director reasserts his jurisdiction and proceeds to handle the case directly.

The procedure for adjusting the complaint from this stage on is identical with that which applies to the preceding illustration. The state director will use field adjusters to investigate the facts when necessary; refer the complaint to a state adjustment board for review if that seems desirable; and finally submit the case, if necessary, to the National Compliance Director, who will follow the same procedure as in the other examples.

CONCLUDING STATEMENT

The National Industrial Recovery Act was passed at a time of widespread unemployment; of feeble, if not paralyzed, initiative; of doubt on the part of many of the more fundamental institutions of our economic system. In such a scene it seemed to groups with varied, even conflicting, views to offer an instrument for forwarding their aspirations and for generating economic advance. The administration of the law, carried forward with remarkable energy and vigor, has, through the President's Re-employment Agreement, provided for a large section of industry a national minimum wage and a national maximum work week. It has in addition set up some 300 codes of fair competition and has, the Administration asserts, many others close to adoption. The mechanism for enforcing the codes is still necessarily in tentative rather than definite form. The Administration is now addressing itself to the task of reviewing the work thus far accomplished—to a "great round-up" of comment and suggestion.

Experience will show the strengths and weaknesses of various administrative devices; issues of conflict will come into focus and be resolved; the court will determine the legality of as yet uncertain situations; and the movement of economic forces will reflect the influence wrought at innumerable points in the economic

structure. As these events transpire the wider meaning of the law and its administration will be disclosed. It should, therefore, be reiterated as the concluding thought in this preliminary analysis that the more far-reaching results of the law and its administration still lie ahead.

DOCUMENTARY

APPENDICES

APPENDIX A

PRESIDENT ROOSEVELT'S SPECIAL MESSAGE, MAY 17, 1933

To the Congress:

Before the Special Session of the Congress adjourns, I recommend two further steps in our national campaign to put people to work.

My first request is that (I) the Congress provide for the machinery necessary for a great co-operative movement throughout all industry in order to obtain wide re-employment, to shorten the working week, to pay a recent wage for the shorter week and to prevent unfair competition and disastrous overproduction.

Employers cannot do this singly or even in organized groups, because such action increases costs and thus permits cut-throat underselling by selfish competitors unwilling to join in such a public-spirited endeavor.

One of the great restrictions upon such co-operative efforts up to this time has been our anti-trust laws. They were properly designed as the means to cure the great evils of monopolistic price fixing. They should certainly be retained as a permanent assurance that the old evils of unfair competition shall never return. But the public interest will be served if, with the authority and under the guidance of government, private industries are permitted to make agreements and codes insuring fair competition. However, it is necessary, if we thus limit the operation of anti-trust laws to their original purpose to provide a rigorous licensing power in order to meet rare cases of non-co-operation and abuse. Such a safeguard is indispensable.

The other proposal (II) gives the executive full power to start a large program of direct employment. A careful survey convinces me that approximately $3,300,000,000 can be invested

in useful and necessary public construction, and at the same time put the largest possible number of people to work.

Provisions should be made to permit states, counties and municipalities to undertake useful public works, subject, however, to the most effective possible means of eliminating favoritism and wasteful expenditures on unwarranted and uneconomic projects.

We must, by prompt and vigorous action, override unnecessary obstructions which in the past have delayed the starting of public works programs. This can be accomplished by simple and direct procedure.

In carrying out this program it is imperative that the credit of the United States government be protected and preserved. This means that at the same time we are making these vast emergency expenditures there must be provided sufficient revenue to pay interest and amortization on the cost and that the revenues so provided must be adequate and certain rather than inadequate and speculative.

Careful estimates indicate that at least $220,000,000 of additional revenue will be required to service the contemplated borrowings of the government. This will of necessity involve some form or forms of new taxation. A number of suggestions have been made as to the nature of these taxes. I do not make a specific recommendation at this time, but I hope that the Committee on Ways and Means, of the House of Representatives, will make a careful study of revenue plans and be prepared by the beginning of the coming week to propose the taxes which they judge to be best adapted to meet the present need and which will at the same time be least burdensome to our people. At the end of that time, if no decision has been reached or if the means proposed do not seem to be sufficiently adequate or certain, it is my intention to transmit to the Congress my own recommendations in the matter.

The taxes to be imposed are for the purpose of providing re-employment for our citizens. Provision should be made for their reduction or elimination.

First—As fast as increasing revenues from improving business become available to replace them;

Second—Whenever the repeal of the 18th Amendment now pending before the States shall have been ratified and the repeal

of the Volstead Act effected. The pre-prohibition revenue laws would then automatically go into effect and yield enough wholly to eliminate these temporary re-employment taxes.

Finally, I stress the fact that all of these proposals are based on the gravity of the emergency and that therefore it is urgently necessary immediately to initiate a re-employment campaign if we are to avoid further hardships, to sustain business improvement and to pass on to better things.

For this reason I urge prompt action on this legislation.

FRANKLIN D. ROOSEVELT.

The White House, May 17, 1933.

APPENDIX B

TITLE I—INDUSTRIAL RECOVERY ACT

(Only Title I of the Act is given, since it is the one with which this book is concerned.)

DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

ADMINISTRATIVE AGENCIES

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such federal officers and employees, and, with the consent of the state, such state and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without

regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by Section 1 has ended.

CODES OF FAIR COMPETITION

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under Sub-division (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this sub-section, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the

policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this sub-section, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this sub-section the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this sub-section shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title

with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of Clause (2) of Sub-section (a) of Section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provision of Section 2 (c), this sub-section shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by Section 1 has ended.

SEC. 5. While this title is in effect (or in the case of a license, while Section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the anti-trust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything

in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

LIMITATIONS UPON APPLICATION OF TITLE

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions

referred to in clauses (1) and (2) of Sub-section (a) prevail, to establish, by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under Sub-section (a) of Section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under Sub-section (a) of Section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several states and with foreign nations, or between the District of Columbia or any territory of the United States and any state, territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any state or territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any territory or any insular possession or other place under the jurisdiction of the United States.

APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of Title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes," approved May 12, 1933; and such Title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

OIL REGULATION

SEC. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly au-

thorized agency of a state. Any violation of any order of the President issued under the provisions of this sub-section shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

RULES AND REGULATIONS

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

Dated ....., 1933.

(Sign here).....

(Name)

.....

(Official position)

.....

(Firm and corporation name)

.....

(Industry or trade)

.....

(Number of employees at the date of signing)

.....

(Street)

.....

(Town or city)

.....

(State)

APPENDIX C

PRESIDENTIAL STATEMENT OUTLINING POLICIES OF THE NRA, JUNE 16, 1933

The law I have just signed was passed *to put people back to work*—to let them buy more of the products of farms and factories and start our business at a living rate again. This task is in two stages—first, to get many hundreds of thousands of the unemployed back on the pay roll by snowfall and second, to plan for a better future for the longer pull. While we shall not neglect the second, the first stage is an emergency job. It has the right of way.

The second part of the Act gives employment by a vast program of public works. Our studies show that we should be able to hire many men at once and to step up to about a million new jobs by October 1, and a much greater number later. We must put at the head of our list those works which are fully ready to start now. Our first purpose is to create employment as fast as we can but we should not pour money into unproved projects.

We have worked out our plans for action. Some of it will start tomorrow. I am making available $400,000,000 for state roads under regulations which I have just signed and I am told that the states will get this work under way at once. I have also just released over $200,000,000 for the Navy to start building ships under the London Treaty.

In my inaugural I laid down the simple proposition that nobody is going to starve in this country. It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country. By "business" I mean the whole of commerce as well as the whole of industry; by workers I mean all workers—the white-collar class as well as the men in overalls; and by *living* wages I mean more than a bare subsistence level—I mean the wages of *decent* living.

Throughout industry, the change from starvation wages and starvation employment to living wages and sustained employ-

ment can, in large part, be made by an industrial covenant to which all employers shall subscribe. It is greatly to their interest to do this because decent living, widely spread among our 125,000,000 people eventually means the opening up to industry of the richest market which the world has known. It is the only way to utilize the so-called excess capacity of our industrial plants. This is the principle that makes this one of the most important laws that ever came from Congress because, before the passage of this Act, no such industrial covenant was possible.

On this idea, the first part of the Act proposes to our industry a great spontaneous co-operation to put millions of men back in their regular jobs this summer. The idea is simply for employers to hire more men to do the existing work by reducing the work-hours of each man's week and at the same time paying a living wage for the shorter week.

No employer and no group of less than all employers in a single trade could do this alone and continue to live in business competition. But if *all* employers in each trade now band themselves faithfully in these modern guilds—without exception—and agree to act together and at once, none will be hurt and millions of workers, so long deprived of the right to earn their bread in the sweat of their labor, can raise their heads again. The challenge of this law is whether we can sink selfish interest and present a solid front against a common peril.

It is a challenge to industry which has long insisted that, given the right to act in unison, it could do much for the general good which has hitherto been unlawful. From today it has that right.

Many good men voted this new charter with misgivings. I do not share these doubts. I had part in the great co-operation of 1917 and 1918 and it is my faith that we can count on our industry once more to join in our general purpose to lift this new threat and to do it without taking any advantage of the public trust which has this day been reposed without stint in the good faith and high purpose of American business.

But industry is challenged in another way. It is not only the slackers within trade groups who may stand in the path of our common purpose. In a sense these groups compete with each other, and no single industry, and no separate cluster of industries, can do this job alone, for exactly the same reason that no

single employer can do it alone. In other words, we can imagine such a thing as a *slacker industry.*

This law is also a challenge to labor. Workers, too, are here given a new charter of rights long sought and hitherto denied. But they know that the first move expected by the nation is a great co-operation of all employers, by one single mass action, to improve the case of workers on a scale never attempted in any nation. Industries can do this only if they have the support of the whole public and especially of their own workers. This is not a law to foment discord and it will not be executed as such. This is a time for mutual confidence and help and we can safely rely on the sense of fair play among all Americans to assure every industry which now moves forward promptly in this united drive against depression that its workers will be with it to a man.

It is, further, a challenge to administration. We are relaxing some of the safeguards of the anti-trust laws. The public must be protected against the abuses that led to their enactment, and to this end we are putting in place of old principles of unchecked competition some new government controls. They must above all be impartial and just. Their purpose is to free business—not to shackle it—and no man who stands on the constructive forward looking side of his industry has anything to fear from them. To such men the opportunities for individual initiative will open more amply than ever. Let me make it clear, however, that the anti-trust laws still stand firmly against monopolies that restrain trade and price fixing which allows inordinate profits or unfairly high prices.

If we ask our trade groups to do that which exposes their business, as never before, to undermining by members who are unwilling to do their parts, we must guard those who play the game for the general good against those who may seek selfish gains from the unselfishness of others. We must protect them from the racketeers who invade organizations of both employers and workers. We are spending billions of dollars and if that spending is really to serve our ends it must be done quickly. We must see that our haste does not permit favoritism and graft. All this is a heavy load for any government and one that can be borne only if we have the patience, co-operation, and support of people everywhere.

Finally, this law is a challenge to our whole people. There is no power in America that can force against the public will such action as we require. But there is no group in America that can withstand the force of an aroused public opinion. This great co-operation can succeed *only* if those who bravely go forward to restore jobs have aggressive public support and those who lag are made to feel the full weight of public disapproval.

As to the machinery—the practical way of accomplishing what we are setting out to do, when a trade association has a code ready to submit and the association has qualified as truly representative, and after reasonable notice has been issued to all concerned, a public hearing will be held by the Administrator or a deputy. A Labor Advisory Board appointed by the Secretary of Labor will be responsible that every affected labor group, whether organized or unorganized, is fully and adequately represented in an advisory capacity and any interested labor group will be entitled to be heard through representatives of its own choosing. An Industrial Advisory Board appointed by the Secretary of Commerce will be responsible that every affected industrial group is fully and adequately represented in an advisory capacity and any interested industrial group will be entitled to be heard through representatives of its own choosing. A Consumers' Advisory Board will be responsible that the interests of the consuming public will be represented and every reasonable opportunity will be given to any group or class who may be affected directly or indirectly to present their views.

At the conclusion of these hearings and after the most careful scrutiny by a competent economic staff the Administrator will present the subject to me for my action under the law.

I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full effect of this plan unless, in these first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible. If we

can thus start a strong sound upward spiral of business activity our industries will have little doubt of black-ink operations in the last quarter of this year. The pent-up demand of this people is very great and if we can release it on so broad a front, we need not fear a lagging recovery. There is greater danger of too much feverish speed.

In a few industries, there has been some forward buying at unduly depressed prices in recent weeks. Increased costs resulting from this government inspired movement may make it very hard for some manufacturers and jobbers, to fulfill some of their present contracts without loss. It will be a part of this wide industrial co-operation for those having the benefit of these forward bargains (contracted before the law was passed) to take the initiative in revising them to absorb some share of the increase in their suppliers' costs, thus raised in the public interest. It is only in such a willing and considerate spirit, throughout the whole of industry, that we can hope to succeed.

Under Title I of this Act, I have appointed Hugh Johnson as Administrator and a special Industrial Recovery Board under the chairmanship of the Secretary of Commerce. This organization is now prepared to receive proposed codes and to conduct prompt hearings looking toward their submission to me for approval. While acceptable proposals of no trade group will be delayed, it is my hope that the 10 major industries which control the bulk of industrial employment can submit their simple basic codes at once and that the country can look forward to the month of July as the beginning of our great national movement back to work.

During the coming 3 weeks Title II relating to public works and construction projects will be temporarily conducted by Col. Donald H. Sawyer as administrator and a special temporary board consisting of the Secretary of the Interior as chairman, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of War, the Attorney General, the Secretary of Labor, and the Director of the Budget.

During the next 2 weeks the Administrator and this board will make a study of all projects already submitted or to be submitted and, as previously stated, certain allotments under the new law will be made immediately.

Between these twin efforts—public works and industrial re-

employment, it is not too much to expect that a great many men and women can be taken from the ranks of the unemployed before winter comes. It is the most important attempt of this kind in history. As in the great crisis of the World War, it puts a whole people to the simple but vital test: *"Must we go on in many groping, disorganized, separate units to defeat or shall we move as one great team to victory?"*

APPENDIX D

PRESIDENT'S RE-EMPLOYMENT AGREEMENT

(Authorized by Section 4(a) National Industry Recovery Act)

During the period of the President's emergency re-employment drive, that is to say, from August 1 to December 31, 1933, or to any earlier date of approval of a code of fair competition to which he is subject, the undersigned hereby agrees with the President as follows:

(1) After August 31, 1933, not to employ any person under 16 years of age, except that persons between 14 and 16 may be employed (but not in manufacturing or mechanical industries) for not to exceed 3 hours per day and those hours between 7 A.M. and 7 P.M. in such work as will not interfere with hours of day school.

(2) Not to work any accounting, clerical, banking, office, service, or sales employees (except outside salesmen) in any store, office, department, establishment, or public utility, or on any automotive or horse-drawn passenger, express, delivery, or freight service, or in any other place or manner, for more than 40 hours in any 1 week and not to reduce the hours of any store or service operation to below 52 hours in any 1 week, unless such hours were less than 52 hours per week before July 1, 1933, and in the latter case not to reduce such hours at all.

(3) Not to employ any factory or mechanical worker or artisan more than a maximum week of 35 hours until December 31, 1933, but with the right to work a maximum week of 40 hours for any 6 weeks within this period; and not to employ any worker more than 8 hours in any 1 day.

(4) The maximum hours fixed in the foregoing paragraphs (2) and (3) shall not apply to employees in establishments employing not more than two persons in towns of less than 2,500 population which towns are not part of a larger trade area; nor to registered pharmacists or other professional persons employed in their profession; nor to employees in a managerial or execu-

tive capacity, who now receive more than $35 per week; nor to employees on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production but, in any such special case, at least time and one third shall be paid for hours worked in excess of the maximum. Population for the purposes of this agreement shall be determined by reference to the 1930 federal census.

(5) Not to pay any of the classes of employees mentioned in paragraph (2) less than $15 per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than $14.50 per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than $14 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population to increase all wages by not less than 20 per cent, provided that this shall not require wages in excess of $12 per week.

(6) Not to pay any employee of the classes mentioned in paragraph (3) less than 40 cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, in which latter case not to pay less than the hourly rate on July 15, 1929, and in no event less than 30 cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piece-work performance.

(7) Not to reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitable readjustment of all pay schedules.

(8) Not to use any subterfuge to frustrate the spirit and intent of this agreement which is, among other things, to increase employment by a universal covenant, to remove obstructions to commerce and to shorten hours and to raise wages for the shorter week to a living basis.

(9) Not to increase the price of any merchandise sold after the date hereof over the price on July 1, 1933, by more than is made necessary by actual increases in production, replacement,

or invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the Agricultural Adjustment Act, since July 1, 1933, and, in setting such price increases, to give full weight to probable increases in sales volume and to refrain from taking profiteering advantage of the consuming public.

(10) To support and patronize establishments which also have signed this agreement and are listed as members of NRA (National Recovery Administration).

(11) To co-operate to the fullest extent in having a code of fair competition submitted by his industry at the earliest possible date, and in any event before September 1, 1933.

(12) Where, before June 16, 1933, the undersigned had contracted to purchase goods at a fixed price for delivery during the period of this agreement, the undersigned will make an appropriate adjustment of said fixed price to meet any increase in cost caused by the seller having signed this President's Re-employment Agreement or having become bound by any code of fair competition approved by the President.

(13) This agreement shall cease upon approval by the President of a code to which the undersigned is subject; or, if the NRA so elects, upon submission of a code to which the undersigned is subject and substitution of any of its provisions for any of the terms of this agreement.

(14) It is agreed that any person who wishes to do his part in the President's re-employment drive by signing this agreement, but who asserts that some particular provision hereof, because of peculiar circumstances, will create great and unavoidable hardship, may obtain the benefits hereof by signing this agreement and putting it into effect and then, in a petition approved by a representative trade association of his industry, or other representative organization designated by NRA, may apply for a stay of such provision pending a summary investigation by NRA, if he agrees in such application to abide by the decision of such investigation. This agreement is entered into pursuant to Section 4 (a) of the National Industrial Recovery Act and subject to all the terms and conditions required by Sections 7 (a) and 10 (b) of that Act.

APPENDIX E

SAMPLE CODES AND CODE PROVISIONS

1. THE COTTON TEXTILE INDUSTRY CODE

(This code was the first one approved and illustrates a relatively simple form of code.)

EXECUTIVE ORDER

The cotton textile code, a stenographic transcript of the hearing thereof, a report and recommendations of the National Recovery Administration thereon (including a special statistical analysis of the industry by the Division of Planning and Research), and reports showing unanimous approval of such report and recommendations by each the Labor Advisory Board, the Industrial Advisory Board, and the Consumers' Advisory Board, having been submitted to the President, the following are his orders thereon.

In accordance with Section 3 (a), National Industrial Recovery Act, the cotton textile code submitted by duly qualified trade associations of the cotton textile industry on June 16, 1933, in full compliance with all pertinent provisions of that Act, is hereby approved by the President subject to the following interpretations and conditions:

(1) Limitations on the use of productive machinery shall not apply to production of tire yarns or fabrics for rubber tires for a period of three weeks after this date.

(2) The Planning Committee of the industry, provided for in the code, will take up at once the question of employee purchase of homes in mill villages, especially in the South, and will submit to the Administration before January 1st, 1934, a plan looking toward eventual employee home ownership.

(3) Approval of the minimum wages proposed by the code is not to be regarded as approval of their economic sufficiency but is granted in the belief that, in view of the large increase in wage payments provided by the code, any higher minima at

this time might react to reduce consumption and employment, and on the understanding that if and as conditions improve the subject may be reopened with a view to increasing them.

(4) That office employees be included within the benefits of the code.

(5) The existing amounts by which wages in the higher-paid classes, up to workers receiving $30 per week, exceed wages in the lowest paid class, shall be maintained.

(6) While the exception of repair shop crews, engineers, electricians and watching crews from the maximum hour provisions is approved, it is on the condition that time and one-half be paid for overtime.

(7) While the exception of cleaners and outside workers is approved for the present, it is on condition that the Planning and Supervisory Committee provided by Section 6 prepare and submit to the Administration, by January 1, 1934, a schedule of minimum wages and of maximum hours for these classes.

(8) It is interpreted that the provisions for maximum hours establish a maximum of hours of labor per week *for every employee covered,* so that under no circumstances will such an employee be employed or permitted to work for one or more employers in the industry in the aggregate in excess of the prescribed number of hours in a single week.

(9) It is interpreted that the provisions for a minimum wage in this code establish a guaranteed minimum rate of pay per hour of employment regardless of whether the employee's compensation is otherwise based on a time rate or upon a piece-work performance. This is to avoid frustration of the purpose of the code by changing from hour to piece-work rules.

(10) Until adoption of further provisions of this code necessary to prevent any improper speeding up of work to the disadvantage of employees ("stretch-outs") and in a manner destructive of the purposes of the National Industrial Recovery Act, it is required that any and all increases in the amount of work or production required of employees over that required on July 1, 1933, must be submitted to and approved by the agency created by Section Six of the code and by the Administration and if not so submitted such increases will be regarded as a *prima facie* violation of the provision for minimum wages.

(11) The code will be in operation as to the whole industry

but, opportunity shall be given for administrative consideration of every application of the code in particular instances to any person directly affected who has not in person or by a representative consented and agreed to the terms of the code. Any such person shall be given an opportunity for a hearing before the Administration or his representative, and for a stay of the application to him of any provision of the code, prior to incurring any liability to the enforcement of the code against him by any of the means provided in the National Industrial Recovery Act, pending such hearing. At such hearing any objection to the application of the code in the specific circumstances may be presented and will be heard.

(12) This approval is limited to a four months' period with the right to ask for a modification at any time and subject to a request for renewal for another four months at any time before its expiration.

(13) Section 6 of the code is approved on condition that the Administration be permitted to name three members of the Planning and Supervisory Committee of the industry. Such members shall have no vote but in all respects shall be members of such Planning and Supervisory Committee.

(Signed) FRANKLIN D. ROOSEVELT.

CODE OF FAIR COMPETITION

To effectuate the policy of Title I of the National Industrial Recovery Act, during the period of the emergency, by reducing and relieving unemployment, improving the standards of labor, eliminating competitive practices destructive of the interests of the public, employees, and employers, relieving the disastrous effects of over-capacity, and otherwise rehabilitating the cotton textile industry and by increasing the consumption of industrial and agricultural products by increasing purchasing power, and in other respects, the following provisions are established as a code of fair competition for the cotton textile industry:

I. *Definitions.*—The term "cotton textile industry" as used herein is defined to mean the manufacture of cotton yarn and/or cotton woven fabrics, whether as a final process or as a part of a larger or further process. The term "employees" as used herein shall include all persons employed in the conduct of such operations. The term "productive machinery" as used herein is defined

to mean spinning spindles and/or looms. The term "effective date" as used herein is defined to be July 17, 1933, or if this code shall not have been approved by the President two weeks prior thereto, then the second Monday after such approval. The term "persons" shall include natural persons, partnerships, associations, and corporations.

II. On and after the effective date, the minimum wage that shall be paid by employers in the cotton textile industry to any of their employees—except learners during a six-weeks' apprenticeship, cleaners, and outside employees—shall be at the rate of $12 per week when employed in the Southern section of the industry and at the rate of $13 per week when employed in the Northern section for 40 hours of labor.

III. On and after the effective date, employers in the cotton textile industry shall not operate on a schedule of hours of labor for their employees—except repair shop crews, engineers, electricians, firemen, office and supervisory staff, shipping, watching and outside crews, and cleaners—in excess of 40 hours per week and they shall not operate productive machinery in the cotton textile industry for more than 2 shifts of 40 hours each per week.

IV. On and after the effective date, employers in the cotton textile industry shall not employ any minor under the age of 16 years.

V. With a view of keeping the President informed as to the observance or non-observance of this code of fair competition, and as to whether the cotton textile industry is taking appropriate steps to effectuate the declared policy of the National Industrial Recovery Act, each person engaged in the cotton textile industry will furnish duly certified reports in substance as follows and in such form as may hereafter be provided:

(a) *Wages and hours of labor.*—Returns every four weeks showing actual hours worked by the various occupational groups of employees and minimum weekly rates of wage.

(b) *Machinery data.*—In the case of mills having no looms, returns should be made every four weeks showing the number of spinning spindles in place, the number of spinning spindles actually operating each week, the number of shifts, and the total number of spindle hours each week. In the case of mills having no spinning spindles, returns every four weeks showing

the number of looms in place, the number of looms actually operated each week, the number of shifts and the total number of loom hours each week. In the case of mills that have spinning spindles and looms, returns every four weeks showing the number of spinning spindles and looms in place; the number of spinning spindles and looms actually operated each week, the number of shifts, and the total number of spindle hours and loom hours each week.

(c) *Reports of production, stocks, and orders.*—Weekly returns showing production in terms of the commonly used unit, i.e., linear yards, or pounds or pieces; stocks on hand both sold and unsold stated in the same terms and unfilled orders stated also in the same terms. These returns are to be confined to staple constructions and broad divisions of cotton textiles. The Cotton Textile Institute, Inc., 320 Broadway, New York City, is constituted the agency to collect and receive such reports.

VI. To further effectuate the policies of the Act, the Cotton Textile Industry Committee, the applicants herein, or such successor committee or committees as may hereafter be constituted by the action of the Cotton Textile Institute, the American Cotton Manufacturers Association, and the National Association of Cotton Manufacturers, is set up to co-operate with the Administrator as a planning and fair-practice agency for the cotton textile industry. Such agency may from time to time present to the Administrator recommendations based on conditions in the industry as they may develop from time to time which will tend to effectuate the operation of the provisions of this code and the policy of the National Industrial Recovery Act, and in particular along the following lines:

1. Recommendations as to the requirements by the Administrator of such further reports from persons engaged in the cotton textile industry of statistical information and keeping of uniform accounts as may be required to secure the proper observance of the code and promote the proper balancing of production and consumption and the stabilization of the industry and employment.

2. Recommendations for the setting up of a service bureau for engineering, accounting, credit, and other purposes to aid the smaller mills in meeting the conditions of the emergency and the requirements of this code.

3. Recommendations (1) for the requirement by the Admin-

istrator of registration by persons engaged in the cotton textile industry of their productive machinery, (2) for the requirement by the Administrator that prior to the installation of additional productive machinery by persons engaged or engaging in the cotton textile industry, except for the replacement of a similar number of existing looms or spindles or to bring the operation of existing productive machinery into balance, such persons shall secure certificates that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of the emergency, and (3) for the granting or withholding by the Administrator of such certificates if so required by him.

4. Recommendations for changes in, or exemptions from the provisions of this code as to the working hours of machinery which will tend to preserve a balance of productive activity with consumption requirements, so that the interests of the industry and the public may be properly served.

5. Recommendations for the making of requirements by the Administrator as to practices by persons engaged in the cotton textile industry as to methods and conditions of trading, the naming and reporting of prices which may be appropriate to avoid discrimination, to promote the stabilization of the industry, to prevent and eliminate unfair and destructive competitive prices and practices.

6. Recommendations for regulating the disposal of distress merchandise in a way to secure the protection of the owners and to promote sound and stable conditions in the industry.

7. Recommendations as to the making available to the suppliers of credit to those engaged in the industry of information regarding terms of, and actual functioning of any or all of the provisions of the code, the conditions of the industry and regarding the operations of any and all of the members of the industry covered by such code to the end that during the period of emergency available credit may be adapted to the needs of such industry considered as a whole and to the needs of the small as well as to the large units.

8. Recommendations for dealing with any inequalities that may otherwise arise to endanger the stability of the industry and of production and employment.

Such recommendations, when approved by the Administrator,

shall have the same force and effect as any other provisions of this code.

Such agency is also set up to co-operate with the Administrator in making investigations as to the functioning and observance of any of the provisions of this code, at its own instance or on complaint by any persons affected, and to report the same to the Administrator.

Such agency is also set up for the purpose of investigating and informing the Administrator on behalf of the cotton textile industry as to the importation of competitive articles into the United States in substantial quantities or increasing ratio to domestic production on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of this code and as an agency for making complaint to the President on behalf of the cotton textile industry, under the provisions of the National Industrial Recovery Act, with respect thereto.

VII. Where the costs of executing contracts entered into in the cotton textile industry prior to the presentation to Congress of the National Industrial Recovery Act are increased by the application of the provisions of that Act to the industry, it is equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts to reflect such increased costs be arrived at by arbitral proceedings or otherwise, and the Cotton Textile Industry Committee, the applicant for this code, is constituted an agency to assist in effecting such adjustments.

VIII. Employers in the cotton textile industry shall comply with the requirements of the National Industrial Recovery Act as follows: "(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours

of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

IX. This code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of Clause 10 (b) of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title I of said Act, and specifically to the right of the President to cancel or modify his approval of this code or any conditions imposed by him upon his approval thereof.

X. Such of the provisions of this code as are not required to be included therein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated as changes in circumstances or experience may indicate. It is contemplated that from time to time supplementary provisions to this code or additional codes will be submitted for the approval of the President to prevent unfair competition in price and other unfair and destructive competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act consistent with the provisions hereof.

EXECUTIVE ORDER, JULY 15, 1933

A code of fair competition for the cotton textile industry has been heretofore approved by order of the President dated July 9, 1933, on certain conditions set forth in such order. The applicants for said code have now requested the withdrawal of condition 12 of said order providing for the termination of approval at the end of four months unless expressly renewed, have accepted certain other conditions, have proposed amendments to the code to effectuate the intent of the remaining conditions, and have requested that final approval be given to the code as so amended and on such conditions.

Pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, on the report and recommendation of the Administrator and on consideration.

It is ordered that the condition heretofore imposed as to the termination of approval of the code is now withdrawn and that the code of fair competition for the cotton textile in-

dustry is finally approved with the conditions so accepted and with the amendments so proposed, as set forth in Schedule A attached hereto.

Schedule A

Application to the President by the Cotton Textile Industry Committee for Final Approval of Code of Fair Competition for the Cotton Textile Industry

The Cotton Textile Industry Committee, the applicant for the approval of the code of fair competition for the cotton textile industry, submitted for the approval of the President June 16, 1933, and as revised June 30, 1933, accepts the interpretations and conditions to the approval thereof set forth in paragraphs 1, 3, 7, 8, 9, and 13 of the order of the President dated July 9, 1933, and asks the approval of the President to the following amendments to such code as properly complying with and effectuating the conditions provided for in paragraphs 2, 4, 5, 6, 10, and 11 of said order of approval, and asks for the final approval by the President of the code of fair competition for the cotton textile industry as so amended, and on the conditions so accepted and with the omission of the condition in paragraph 12 of such order as to the termination of the approval at the end of four months.

1. It shall be one of the functions of the planning and fair practice agency provided for in Section 6 of the code to consider the question of plans for eventual employee ownership of homes in mill villages and submit to the Recovery Administration prior to January 1, 1934, its report in the matter.

2. On and after July 31, 1933, the maximum hours of labor for office employees in the cotton textile industry shall be an average of forty hours a week over each period of six months.

3. The amount of differences existing prior to July 17, 1933, between the wage rates paid various classes of employees (receiving more than the established minimum wage) shall not be decreased—in no event, however, shall any employer pay any employee a wage rate which will yield a less wage for a work week of 40 hours than such employee was receiving for the same class of work for the longer week of 48 hours or more prevailing prior to July 17, 1933. It shall be a function of the planning

and fair practice agency provided for in paragraph 6 of the code to observe the operation of these provisions and recommend such further provisions as experience may indicate to be appropriate to effectuate their purposes.

4. On and after the effective date the maximum hours of labor of repair shop crews, engineers, electricians and watching crews in the cotton textile industry shall, except in case of emergency work, be forty hours a week with a tolerance of 10 per cent. Any emergency time in any mill shall be reported monthly to the planning and fair practice agency provided for in paragraph 6 of the code, through the Cotton Textile Institute.

5. Until adoption of further provisions of this code that may prove necessary to prevent any improper speeding up of work (stretch-outs), no employee of any mill in the cotton textile industry shall be required to do any work in excess of the practices as to the class of work of such employee prevailing on July 1, 1933, or prior to the share-the-work movement, unless such increase is submitted to and approved by the agency created by Section 6 of the code and by the National Recovery Administration.

6. This code shall be in operation on and after the effective date as to the whole cotton textile industry except as an exemption from or a stay of the application of its provisions may be granted by the Administrator to a person applying for the same or except as provided in an executive order. No distinction shall be made in such exemptions between persons who have and have not joined in applying for the approval of this code.

Respectfully submitted,

THE COTTON TEXTILE INDUSTRY COMMITTEE,
GEORGE A. SLOAN, *Chairman.*

DATED JULY 15, 1933.

AMENDMENT TO THE CODE

To make proper provision with regard to the stretch-out (or specialization) system or any other problem of working conditions in the cotton textile industry, it is provided:

1. There shall be constituted by appointment of the Administrator a Cotton Textile National Industrial Relations Board, to be composed of three members, one to be nominated by the

Cotton Textile Industry Committee to represent the employers, one to be nominated by the Labor Advisory Board of the National Recovery Administration to represent the employees, and a third to be selected by the Administrator. This National Board shall be provided by the National Recovery Administration with a per diem for actual days engaged in its work and with such secretarial and expert technical assistance as it may require in the performance of its duties.

2. The Administrator, upon the nomination of the Cotton Textile National Industrial Relations Board shall appoint in each state in which the cotton textile industry operates a state cotton textile industrial relations board composed of three members, one of whom shall be selected from the employers of the cotton textile industry, one from the employees of the cotton textile industry, and a third to represent the public.

3. Whenever, in any cotton textile mill, a controversy shall arise between employer and employees as to the stretch-out (or specialization) system or any other problem of working conditions, the employer and the employees may establish in such mill an industrial relations committee chosen from the management and the employees of the mill and on which the employer and the employees shall have equal representation of not more than three representatives each. If such a committee is not otherwise established, the employer or the employee, or both, may apply to the State Industrial Relations Board for assistance and co-operation in the establishment in such mill of such industrial relations committee. The term of service of each such mill committee shall be limited to the adjustment of such controversy or problem of working conditions for the adjustment of which the committee was created.

If the representatives of the employers and of the employees in such industrial relations committee are unable to arrive at an agreement and united action with respect to such differences of opinion, the representatives of the employers or of the employees, or both, may appeal to the State Industrial Relations Board for co-operation and assistance in arriving at an agreement and united action.

It shall be the duty of such industrial relations committee to endeavor to adjust such controversy. In cases where such committee reaches agreement with respect to any such controversy,

such agreement shall be final except that it shall be submitted to the Cotton Textile National Industrial Relations Board for review and approval under such regulations as such National Board may establish.

This provision for such industrial relations committee within the particular mills shall be without prejudice to the freedom of association of employees and the other provisions of Section 7, of the Industrial Recovery Act.

4. It shall be the duty of the State Industrial Relations Board, where their assistance is requested, as provided in Sub-section 3, to co-operate with employers and employees in organizing industrial relations committees in individual cotton textile mills and to co-operate with such committees in the development of conference procedures and in the adjustment of differences of opinions with respect to the operation or introduction of the stretch-out system and other problems of working conditions.

In the event that the State Industrial Relations Board is unable to bring about agreement and united action of labor and management in a controversy so appealed to it, such State Industrial Relations Board shall present the controversy to the National Industrial Relations Board for hearing and final adjustment.

5. The National Industrial Relations Board shall hear and finally determine all such questions brought before it on appeal by the state industrial relations boards and certify its decisions to the Administrator and shall have authority to codify the experience of the industrial relations committees of the various mills and state boards with a view to establishing standards of general practice with respect to the stretch-out (or specialization) system or other problems of working conditions.

[A supplementary code, dated January 24, 1934, contains trade practice provisions for the sale and distribution of the products of the industry. Additional amendments are dated November 8 and December 27, 1933.]

2. THE LUMBER AND TIMBER PRODUCTS INDUSTRIES CODE

(The code is perhaps as comprehensive in its terms and as complex in its administrative features as any of the approved codes.)

STATEMENT IN TRANSMITTAL

The National Lumber Manufacturers Association, representing manufacturers of lumber and timber products throughout the United States, pursuant to the authority of the National Industrial Recovery Act and for the purposes of eliminating unfair competitive practices, reducing and relieving unemployment, improving standards of labor, maintaining standards of quality, rehabilitating the lumber and timber products industries, bringing about sustained yield forest management and permanent sources of employment, conserving natural resources, and otherwise effectuating the policy of the Act, hereby submits for the approval of the President the following code of fair competition for lumber and timber products industries.

By resolution of the Board of Directors July 1, 1933. Concurred in by the following Associations: [48 associations are listed.]

CODE OF FAIR COMPETITION

ART. I. *Purpose.*—This is an undertaking in industrial self-government under such public sanctions as are necessary to carry out in the lumber and timber products industries the purposes of the National Industrial Recovery Act. It is the declared purpose of the lumber and timber products industries and of the adherents to this code, to reduce and relieve unemployment in said industries; to improve the standards of labor therein; to maintain a reasonable balance between the production and the consumption of lumber and timber products; to restore the prices thereof to levels which will avoid the further depletion and destruction of capital assets; and to conserve forest resources and bring about the sustained production thereof.

ART. II. *Definitions.*—(a) "Lumber and timber products" as used herein is defined to include (1) logs, poles and piling; (2) sawn lumber and products of planing mills operated in conjunction with sawmills; (3) shingles; (4) woodwork (mill-

work) including products of planing mills operated in conjunction with retail lumber yards; (5) hardwood flooring; (6) veneers; (7) plywood; (8) kiln dried hardwood dimension; (9) lath; (10) sawed boxes, shook and crates; (11) plywood, veneer and wirebound packages and containers; and (12) in respect of any division or subdivision additional timber products as enumerated in Schedule A.

(b) "Person" as used herein includes, without limitation, any individual, firm, partnership, corporation, association, trust, trustee, or receiver subject to the jurisdiction of this code.

(c) "Divisions" and "subdivisions" as used herein refer to the several administrative units of the lumber and timber products industries which are established and are defined in Schedule A hereof. The divisions and subdivisions initially established are as follows, provided, however, that any division or subdivision, as initially established herein, or as may be established hereafter, or any substantial group in such division or subdivision of the industry as herein defined, may be exempted from the provision of this code by the President or by the Administrator under the provisions of Article XII of this code:

Cypress Division.
Hardwood Division:
- Appalachian and Southern Hardwood Subdivision.
- Mahogany Subdivision.
- Philippine Mahogany Subdivision.
- Walnut Subdivision.
- Northern Hardwood Subdivision.
- North Central Hardwood Subdivision.
- Northeastern Hardwood Subdivision.

Northern Hemlock Division.
Northern Pine Division.
Redwood Division.
Northeastern Softwood Division.
Southern Pine Division:
- Southern Rotary Cut Lumber Subdivision.

West Coast Logging and Lumber Division.
- Douglas Fir Plywood Subdivision.
- Douglas Fir Door Subdivision.

Western Pine Division.

Woodwork Division:

Stock Manufacturers Subdivision.
Wholesale Distributors Subdivision.
Special Woodwork Subdivision.

Wooden Package Division:

Sawed Box, Shook, Crate, and Tray Subdivision.
Plywood Package Subdivision.
Standard Container Subdivision.
Pacific Veneer Package Subdivision.
Egg Case Subdivision.
Wirebound Package Subdivision.
Veneer Fruit and Vegetable Package Subdivision.

Red Cedar Shingle Division:

Stained Shingle Subdivision.

Oak Flooring Division.
Veneer Division.
Maple Flooring Division.
Hardwood Dimension Division.

ART. III. *Administration.*—(a) The applicant organizations shall, with the approval of the President, establish and empower a suitable agency named "Lumber Code Authority, Incorporated" hereinafter referred to as the authority to administer this code in conformity with the provisions of the National Industrial Recovery Act under the authority of the President. Said agency shall be a body incorporated not for profit. Provision shall be made for membership of representatives of the principal divisions of the industries, and provision shall also be made for three non-voting members to be appointed by and to act as advisory representatives of the President.

(b) The authority shall issue and enforce such rules, regulations, and interpretations, and impose upon persons subject to the jurisdiction of this code such restrictions as may be necessary to effectuate the purposes and enforce the provisions of this code.

(c) The authority is authorized and instructed, with respect to the rules of fair trade practice set forth in Schedule B attached hereto, to devise and apply such further requirements or prohibitions, including unfair trade practices, applicable to the industries, which have been specifically condemned by the Federal

Trade Commission, as may conduce to the orderly operation of the lumber and timber products industries, not inconsistent with the provisions of the National Industrial Recovery Act, and with due consideration of the rights of employees in said industries and of the consumers of the products of said industries. Such requirements or prohibitions, when adopted by the authority, shall be submitted to the President for approval and if approved by him shall then be deemed to be supplements to and amendments of Schedule B of this code.

(d) The authority may establish divisions and subdivisions of the industries and shall designate appropriate agencies, and the governing bodies thereof, for the administration of this code in each division and subdivision; the authority may delegate to said agencies all necessary power and authority for the administration of this code within the divisions and subdivisions, including the adoption of division and subdivision code provisions within the scope of the power granted under this code and not inconsistent with it; but the authority shall reserve the power and duty to enforce the provisions of this code. The agencies initially so designated and the governing bodies thereof are set forth in Schedule A.

(e) The governing body of the agency of each designated division or subdivision shall be fairly representative of each group, including any substantial minority group within the division or subdivision, classified by regions, types of manufacture, or other appropriate considerations. The authority shall have the power and duty to establish and maintain the representative character of such governing body and on the failure of any designated agency to be representative, as prescribed herein, the authority shall, unless the designated agency shall comply with such instructions as the authority may give, remove such agency and designate or cause to be designated a different agency for such division or subdivision.

(f) The authority shall co-ordinate the administration of this code with such codes, if any, as may affect any division or subdivision of the lumber and timber products industries or any related industry, with a view to promoting joint and harmonious action upon matters of common interest; it shall receive, and, if it shall approve, shall present for the approval of the Presi-

dent, any proposals for supplementary provisions or amendments of this code or additional codes applicable to the lumber and timber products industries or the various divisions and subdivisions thereof with respect to wages, hours, trade practices, or any other matters affecting such industries or any division or subdivision thereof. Upon approval by the President, such supplementary provisions or amendments of this code or such additional codes shall thereupon have full force and effect and shall be considered as integral parts of this code.

(g) The authority shall admit or cause to be admitted to participation in any division or subdivision to which he belongs, any persons on terms of equality with all other persons participating therein.

ART. IV. *Code reports and fees.*—In order that the President may be informed of the extent of observance of the provisions of this code and of the extent to which the declared policy of the National Industrial Recovery Act as stated herein is being effectuated in the lumber and timber products industries, the authority shall make such reports as the Administrator may require, periodically, or as often as he may direct, and each person shall make such sworn or unsworn reports to the authority, periodically, or as often as it may direct, on wages, hours of labor, conditions of employment, number of employees, production, shipments, sales, stocks, prices, and other matters pertinent to the purposes of this code as the authority may require, and each person subject to the jurisdiction of this code and accepting the benefits of the activities of the authority hereunder shall pay to the authority his proportionate share of the amounts necessary to pay the cost of assembly, analysis, and publication of such reports and data, and of the maintenance of the said authority and its activities. Said proportionate share shall be based upon value of sales or footage of production, as the authority may prescribe for each division or subdivision. The authority may conduct such investigations as are necessary to discharge its duties hereunder.

ART. V. *Labor provisions.*—(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their

agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(d) No individual under 18 years of age shall be employed, except that boys 16 years and over may be employed in the Wooden Package Division and in non-hazardous occupations during school vacations or if there are no wage earners of 18 years or over in their families.

ART. VI. *Hours of labor.*—(a) General provisions and exceptions:

(1) No employee shall be permitted to work for two or more employers for a longer period in any week than specified herein for a single employer.

(2) Exceptions to the standards in respect to maximum hours of labor specified herein are authorized as follows:

A. Executive, supervisory, traveling sales force, and camp cooks.

B. Regular employment in excess of such standards, for employees, such as watchmen, firemen, and repair crews, where required by the nature of their work, for not more than 10 per cent of the employees in any operation, but time and a half shall be paid for weekly overtime.

C. Temporary employment in case of emergency.

D. *Seasonal operations.*—Seasonal operations are defined as those which on account of elevation or other physical conditions or dependence upon climatic factors are ordinarily limited to a period of ten months or less of the calendar year.

The administrative agency of a division or subdivision may authorize employment in a seasonal operation for a maximum number of hours not exceeding 48 hours in any week, with the exception of parts of an operation depending on climatic con-

ditions, such as stream driving and sled hauling, in which a greater excess may be authorized; provided, that the average employment in any seasonal operation in any calendar year shall not exceed the standard schedule.

E. Manufacturers of wooden packages for perishable fruits and vegetables may be authorized by the administrative agency of the Wooden Package Division to depart from the standard schedule of maximum hours applicable to said manufacturers for a period not to exceed four weeks for any one crop, when necessary to furnish packages for any perishable crop; provided that the average employment of any individual in any calendar year shall not exceed the standard schedule.

(b) Subject to the foregoing exceptions, the maximum hours of employment in the respective divisions and subdivisions shall be 40 hours per week.

ART. VII. *Minimum wages.*—(a) General provisions:

(1) The minimum compensation for workers employed on piecework or contract basis shall not be less than the minimum wage hereunder for the number of hours employed.

(2) The existing amounts by which minimum wages in the higher paid classes, up to workers receiving $30.00 per week exceed minimum wages in the lowest paid classes, shall be maintained.

(3) Charges to employees for rent, board, medical attendance, and other services shall be fair.

(b) Subject to the foregoing provisions, the minimum wages which shall be paid by persons under the jurisdiction of this code shall not be less than 40 cents per hour, unless in any division or subdivision of the industries the prevailing hourly rate for the same class of employees on July 15, 1929, as determined by the Administrator on statistical evidence, was less than 40 cents per hour, in which case the rate shall not be less than said prevailing hourly rate so determined, plus fifteen per cent if said hourly rate on July 15, 1929, was less than 30 cents per hour, provided, however, that for wages per hour between 20 cents and 29 cents, inclusive, on July 15, 1929, with wages of less than 20 cents per hour on that date being considered as 20 cents, the percentage of increase shall diminish one

and one half per cent for each cent that wages per hour exceeded 20 cents, in accordance with the following schedule:

Wages per Hour, July 15, 1929 *Cents*	Increase under Proposed Schedule *Per cent*	Wages per Hour under Proposed Schedule *Cents*
20	15	23
21	13½	24
22	12	24.5
23	10½	25.5
24	9	26
25	7½	27
26	6	27.5
27	4½	28
28	3	29
29	1½	29.5
30	0	30

(c) No minimum rate of wages for any division or subdivision shall be less than that proposed for such division or subdivision by the applicant industries in the code filed July 10, 1933.

(d) Minimum rates of wages so determined in the respective divisions and subdivisions shall be as follows: [Two pages of divisional minimum rates are listed].

In the Wooden Package Division minimum wage rates below those shown in the schedule shall be permitted in the case of boys and girls less than 20 years of age, provided that not more than 20 per cent of the total number of employees of any one plant shall be so classified; and provided further that the differential shall not exceed 3 cents if the rate after subtracting the differential is 27 cents or less, but in no case shall the differential exceed 5 cents.

ART. VIII. *Control of production.*—(a) To effectuate the declared purposes of this code in respect of maintaining a reasonable balance between the production and the consumption of lumber and timber products and to assure adequate supplies thereof, the authority shall determine, and from time to time revise, not less frequently than each three months, estimates of expected consumption, including exports, of lumber and timber products of each division and subdivision; and based thereon

it is empowered to establish, and from time to time revise, production quotas for any division or subdivision of the lumber and timber products industries. Allotments within each division and subdivision, for the persons therein, shall be made, subject to the supervision of the authority, by the agencies designated by it. Said quotas as between such divisions or subdivisions shall be in proportion to the shipments of the products of each during a representative recent past period to be determined by the authority; but the authority may modify said proportions if warranted by evidence. In case of divisions or subdivisions, the raw material of which is imported, the quotas and allotments may be in terms of imports, so far as may be consistent with the provisions of Section 7 (a) of the National Industrial Recovery Act.

(b) Each person in operation shall be entitled to an allotment. Each person known to any division or subdivision agency to be in operation *shall be registered* by such agency immediately and shall be assigned an allotment. The agency shall also immediately give public notice reasonably adapted to reach all persons operating or desiring to operate, stating the date on which the allotments will be determined; and any person desiring to operate who shall give the agency written notice of such desire ten days before the allotment date, supported by acceptable evidence of ability to operate, *shall be registered* by the agency and assigned an allotment. Any person so registered shall be deemed an "eligible person" for the purposes of this article.

(c) The allotment for each eligible person shall be determined from time to time for a specified period not exceeding three (3) months and, except as may be permitted under the provision of Section (d) hereof, shall be as follows:

(1) That proportion of a specified percentage, determined as provided in Sections (d) and (e) of this article, of the division or subdivision quota which his greatest average hourly production in the hours operated during any three calendar years since December 31, 1924, is of the aggregate of such hourly production of all eligible persons within the division or subdivision.

(2) That proportion of a specified percentage, determined as provided in Sections (d) and (e) of this article, of the division or subdivision quota which his greatest average yearly pro-

duction for any three calendar years since December 31, 1924, is of the aggregate of such yearly production of all eligible persons within the division or subdivision.

(3) That proportion of a specified percentage, determined as provided in Sections (d) and (e) of this article, of the division or subdivision quota which the greatest average number of his employees during any three calendar years since December 31, 1924, is of the aggregate of such number of employees of all eligible persons within the division or subdivision.

(4) That proportion of not to exceed ten (10) per cent of the division or subdivision quota which the amount of taxes paid by him, except federal taxes, taxes on ore, coal, petroleum, ships, retail yards, and timber not set apart for the operation, during the next preceding calendar year is of the total amount of such taxes paid by all eligible persons within the division or subdivision.

(5) That proportion of not to exceed fifteen (15) per cent of the division or subdivision quota which the quantity of reserve standing timber allocated to his operations within said division or subdivision, and at the time the allotment is made, owned by him in fee or under contract is of the total quantity of such reserve standing timber owned in fee or under contract by all eligible persons within the division or subdivision.

(d) (1) Exceptions to or changes in any allotment thus established shall be made only for special, accidental, or extraordinary circumstances, or, in any division or subdivision, for other factors peculiar to a limited group of operations. Exception may be made only on application to the designated division or subdivision agency by an eligible person who must submit evidence in support of his application, and the exception may be granted only upon a published finding and statement of reasons therefor.

(2) A person conducting seasonal operations as defined in Article VI (a) (2) (D) hereof shall be entitled, on application to his division or subdivision agency, to produce during his period of operation not only amounts allotted to him during his period of operation but also amounts allotted to him under Section (c) hereof since the termination of his previous operating period.

(3) In the case of any person (a) who produced during less

than three calendar years since December 31, 1924, and before December 31, 1930, or (b) who is entitled to an allotment for operation of new, additional, or restored facilities, which were not in operation for such three calendar years, or (c) for whom for any other reason such three calendar years are not reasonably representative of his present circumstances, his average hourly production, his average yearly production, and his average number of employees shall be determined by the division or subdivision agency on an equivalent basis by comparison with substantially equal facilities already established and in like regions or conditions.

(4) On application of a division or subdivision, the authority may authorize the allotment of production therein on any one or more of the bases provided in Sub-sections (1), (2), and (3) of Section (c) hereof in such relative proportions as the authority may approve; and including or not the bases, or either of them, provided in Sub-sections (4) and (5) of said Section (c).

(e) In the absence of an approved application from any division or subdivision for the assignment of allotments under the provisions of Sub-section (4) of Section (d) hereof, the authority may direct that allotments within said division or subdivision be assigned in accordance with the provisions of Section (c) in the following relative proportions:

Sub-section (1), hourly production, 40 per cent;
Sub-section (2), yearly production, 30 per cent;
Sub-section (3), number of employees, 15 per cent;
Sub-section (4), taxes paid, 5 per cent;
Sub-section (5), standing timber, 10 per cent;

unless the division or subdivision shall elect to accept the average relative proportions of the divisions or subdivisions whose allotments have been theretofore approved.

(f) The basis for determination of division and subdivision quotas and of individual allotments and any revisions thereof, all quotas, all allotments, and all appeals therefrom and all decisions on appeals shall be published.

(g) Allotments from two or more divisions or subdivisions to the same person shall be separate and distinct and shall not be interchangeable. Allotments shall not be cumulative except

as authorized in specific cases under Section (d) (1) of this article, or in cases of seasonal operations of a division or subdivision under Section (d) (2) of this article, and shall not be transferable except as between operations under the same ownership within the same division or subdivision.

(h) Whenever in the case of any eligible person it shall be necessary, in order to accept and execute orders for export, to have an addition to his regular allotment, provision for such necessary excess shall be made by the division or subdivision agency, provided that any excess above his allotment shall be deducted from his subsequent allotment or allotments.

(i) The authority may modify, or cause to be modified, production quotas and allotments determined hereunder, and the bases therefor, in such manner and to such extent as may be necessary to effectuate the provisions of the code in respect of the conservation and sustained production of forest resources. Such modification shall not be made effective prior to the next succeeding allotment date.

(j) The basis of allotments as provided in Sections (c), (d), and (e) hereof is tentative and is subject to revision. When in the judgment of the authority revision of the bases of allotments is desirable, whether by changing the proportions of the factors in determining allotments enumerated in Section (c), Sub-sections 1, 2, 3, 4, and 5, of this article, in accordance with the procedure established in Sections (d) and (e) hereof, or by the addition of other factors, consideration shall be given to the inclusion of practicable and equitable measures, subject to the approval of the President, for increasing allotments of persons whose costs are below the weighted average defined in Section (a) of Article IX.

(k) The authority, as promptly as practicable after its action pursuant to Art. X hereof, shall submit for the approval of the President appropriate changes in the bases of allotments.

(l) Except as otherwise provided in Section (h) of this article, no person shall produce or manufacture lumber or timber products in excess of his allotment. If any person shall exceed his allotment the division or subdivision agency shall diminish the subsequent allotment or allotments of the offender in an amount equal to such excess.

(m) The authority shall issue interpretations and shall pro-

mulgate rules and regulations necessary for the enforcement of this article, to prevent evasion and secure equitable application thereof, and assign quotas to each division and subdivision which shall become effective on the date specificed by the authority. Each division and subdivision shall assign allotments to all eligible persons effective on the dates specified by the authority.

Interim Article.—Pending the effective date of placing Article VIII or any part thereof in execution in any division or subdivision, the authority may authorize the designated agency of such division or subdivision to assign to eligible persons production allotments in hours of allowable operation.

ART. IX. *Cost protection.*—(a) Whenever and so long as the authority determines that it will contribute toward accomplishment of the declared purposes of the code, and whenever it is satisfied that it is able to determine cost of production as defined in this Section (a), the authority is authorized to establish and from time to time revise minimum prices f.o.b. mill, to protect the cost of production of items or classifications of lumber and timber products. Such minimum prices shall be established with due regard to the maintenance of free competition among species, divisions, and subdivisions, and with the products of other industries and other countries, and to the encouragement of the use of said products; and except for export sales shall be not more than cost of production, determined as provided in this Section (a), nor less than such cost of production after deducting the capital charges specified in items 11 and 12 (b) of this Section (a).

The current weighted average cost of production of persons in operation in a division or subdivision, or where necessary in a group of persons within a division or subdivision, as defined by the authority, shall be established by uniform accounting practices, and shall include—

1. Wages.
2. Materials and supplies.
3. Overhead and administration, including trade association dues and code fees.
4. Shipping, including grading and loading.
5. Selling, not including advertising or trade promotion.
6. Maintenance.

7. Insurance, including compensation and employee insurance, but not including insurance on standing timber.

8. Taxes, including taxes on timber tributary to and allocated to an existing mill or logging operation, not to exceed a twelve-year supply therefor.

9. Interest paid on indebtedness representing plant, facilities, and working capital necessary for mills actually operating or capable of operating, including mills, equipment, logging facilitise, docks, inventory, accounts receivable, and timber tributary to and allocated to any existing mill or logging operation, not to exceed a twelve-year supply therefor.

10. Discounts, claims paid, and losses on trade accounts.

11. Depreciation: On straight-line method, and based on the fair value or the cost, whichever is lower, on operating mills and on mill and logging equipment, including mills and equipment capable of operation, plus amortization of investments in logging railroads, docks, and other logging and plant facilities.

12. Raw material: (a) Logs, flitches, lumber, and other partially manufactured material purchased, at actual cost, and standing timber cut under contract of purchase, at actual cost.

(b) Standing timber carried in capital account, cut for operations, at fair current value to be determined by the Administrator, without regard to greater original cost, higher book value, or accumulated carrying charges.

13. Conservation and reforestation: (a) Costs of protection of timbered and cut-over lands, including fire protection and slash disposal, and protection from insects and disease.

(b) Additional costs when incurred under instructions from the authority, in such an amount as is warranted by market conditions, to be specifically devoted to timber conservation and reforestation in accordance with regulations prescribed by the authority, up to the amount estimated by the authority to be necessary to reproduce the equivalent of the timber converted.

(b) Until such time as the authority shall have formulated and secured the general application by the several divisions and subdivisions of methods of accounting by which item 11 of Section (a) hereof may be accurately ascertained, said item may not be included in the determination of cost of production for the purposes of this article.

(c) Cost of production for each species, determined as pro-

vided in Section (a), including or not including as the case may be, or in whole or in part, capital charges for stumpage and depreciation, shall be allocated by the authority to the several items or classifications of lumber or other products thereof for which minimum prices are established, in proportion to their relative market prices over a representative period. Such allocation may be changed by the authority from time to time as may be found necessary to avoid shortages or excessive accumulations, within any division or subdivision of particular items or classifications of lumber and timber products; but the weighted average minimum price of all items and classifications for each species shall not be more than cost of production as determined in Section (a) nor less than said cost after deducting the capital charges specified in items 11 and 12 (b) of said Section (a).

(d) In determining minimum prices for any division or subdivision the authority shall establish equitable price differentals for products below accepted standards of quality, as prescribed by the authority, such as the products of some small mills.

(e) No person shall sell or offer for sale lumber or timber products upon which minimum prices have been established at prices less than those so established. No person shall sell or offer for sale lumber or timber products to wholesale or other distributors who have been found by the Administrator to have violated any of the provisions of the rules of fair trade practice incorporated in this code as Schedule B, except upon such terms and conditions as the Administrator in accordance with law shall prescribe.

(f) No person shall sell or offer for sale non-standard grades, sizes, dimensions, or classifications of lumber or timber products for the purpose of evading the provisions of this article.

(g) In the case of imported lumber and timber products, minimum prices for domestic sale shall be determined by the authority, and such minimum prices shall be equivalent to the minimum prices determined and approved for the same or similar or competing items, grades, sizes, and species of lumber and timber products of domestic production.

(h) The authority shall secure current information concerning the competition in domestic markets of imported lumber and timber products, and if it shall find that such products are being imported into the United States in substantial quantities or in-

creasing ratio to domestic production and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of this code, it shall complain to the President pursuant to the provisions of Section 3 (e) of the National Industrial Recovery Act and petition for suitable restrictions on the importation of such lumber and timber products.

(i) The authority shall issue interpretations and shall promulgate rules and regulations necessary for the enforcement of this article, to prevent evasion and secure equal application thereof.

(j) Minimum prices established in accordance with the provisions of this article shall become effective ten (10) days after publication thereof by the authority.

ART. X. *Conservation and sustained production of forest resources.*—The applicant industries undertake, in co-operation with public and other agencies, to carry out such practicable measures as may be necessary for the declared purposes of this code in respect of conservation and sustained production of forest resources. The applicant industries shall forthwith request a conference with the Secretary of Agriculture and such state and other public and other agencies as he may designate. Said conference shall be requested to make to the Secretary of Agriculture recommendations of public measures with the request that he transmit them, with his recommendations, to the President; and to make recommendations for industrial action to the authority, which shall promptly take such action, and shall submit to the President such supplements to this code, as it determines to be necessary and feasible to give effect to said declared purposes. Such supplements shall provide for the initiation and administration of said measures necessary for the conservation and sustained production of forest resources, by the industries within each division, in co-operation with the appropriate state and federal authorities. To the extent that said conference may determine that said measures require the co-operation of federal, state, or other public agencies, said measures may to that extent be made contingent upon such co-operation of public agencies.

ART. XI. *Special agreements.*—Voluntary agreements, or proposed voluntary agreements, between and among persons engaged in the logging of timber or the production and distribution

of lumber and timber products, or between and among organizations or groups in the lumber and timber products industries, or in which such persons, organizations, or groups propose to participate, proposed to be submitted to the President for approval under Section 4 (a) of the National Industrial Recovery Act, shall not be in conflict with the provisions of this code or with any approved rule issued thereunder. Such agreements or proposed agreements shall be submitted to the authority and if not disapproved by it within thirty days as being in conflict with the provisions of this code, they may thereafter be submitted to the President for approval; but no person engaged in the production and distribution of lumber and timber products shall participate in any such agreement which has been determined by the authority to be in conflict with the provisions of this code.

ART. XII. *Cancellation or modification.*—(a) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under Title I of the National Industrial Recovery Act in respect of this code.

(b) Any decision, rule, regulation, order, or finding made or course of action followed pursuant to the provisions of this code, may be cancelled or modified by the Administrator whenever he shall determine such action necessary to effectuate the provisions of Title I of the National Industrial Recovery Act.

ART. XIII. *Monopolies.*—(a) This code shall not be construed, interpreted, or applied so as to promote or permit monopolies or monopolistic practices, and shall not be availed of for that purpose.

(b) The provisions of this code shall not be so interpreted or administered as to eliminate or to oppress or to discriminate against small enterprises.

ART. XIV. *Division and subdivision code provisions.*—Code provisions affecting or pertaining to divisions and subdivisions of the lumber and timber products industries are contained in Schedule "A" attached hereto, which is specifically made a part of this code, in so far as they relate to description of the respective divisions and subdivisions, identification of persons and products subject to their jurisdiction, and designation of admin-

istrative agencies. Additional code provisions affecting or pertaining to divisions and subdivisions may be filed with the authority and if not inconsistent with the provisions of this code may be recommended by it to the President. When approved by the President such provisions shall have the same force and effect as any other provisions of this code.

ART. XV. *Violations.*—Violation by any person of any provision of this code or of any rule or regulation issued thereunder and approved by the President, or of any agreement entered into by him with the authority so observe and conform to this code and said rules and regulations or by any importer of any agreement entered into by him with the said authority for the restriction of importation of lumber and timber products, or any false statement or report made to the President or to the authority or to the governing body or agency of any designated division or subdivision, after decision by the Administrator thereon pursuant to Article XVII of this code or otherwise, shall constitute an unfair method of competition, and the offender shall be subject to the penalties imposed by the National Industrial Recovery Act.

ART. XVI. *Rules of fair trade practice.*—(a) The rules of fair trade practice for the lumber and timber products industries, as set forth in Schedule "B" attached hereto, are specifically made a part of this code. The authority shall make such additions to or exceptions from said rules, as the agencies of the respective divisions or subdivisions may request, applicable in the respective divisions and subdivisions, provided the authority finds said additions and exceptions are not unfair to persons in other divisions or subdivisions or their employees, or to consumers, and not inconsistent with the other provisions of this code, or with the National Industrial Recovery Act. Upon approval of such additions and exceptions by the Administrator said rules shall take precedence in the respective divisions and subdivisions in respect of the subject matter of said additions and exceptions, and shall be effective concurrently with the rules so added or excepted to.

(b) The applicant industries undertake to adopt, apply, and enforce branding or marking or marking of lumber and timber

products. Subject to Section (c) hereof, all timbers, all seasoned lumber except factory and shop lumber, all flooring and all shingles and lath shipped to markets within the United States, not including export shipments, shall be branded by the manufacturer or producer thereof or by his agent in such manner as will indicate (1) its species, except as otherwise determined by the authority; (2) its grade; (3) whether it is of standard or sub-standard dimensions; (4) whether it is seasoned or unseasoned. All shipments except export shipments, by rail or water of timber, lumber, flooring, shingles, and lath shall be accompanied by a certficate of the originating shipper showing the quantity and grade thereof.

(c) The authority shall submit to the President, not later than January 1, 1934, provisions, including proposed rules and regulations, necessary to effectuate the requirements of this article and to establish other desirable certification of products, to prevent evasion and to secure equitable application thereof; and the said provisions when approved shall be a part of this code, or of the rules of fair trade practice, and shall be effective not more than thirty (30) days thereafter.

ART. XVII. *Appeals.*—(a) Any interested party shall have the right of complaint to the designated agency of any division or subdivision and of prompt hearing and decision thereon in respect of any decision, rule, regulation, order, or finding made by such agency. Such complaint must be filed in writing with the said agency within a reasonable period of time after said decision, rule, regulation, order, or finding is issued. The decision of said agency may be appealed by any interested party to the authority.

(b) Any interested party shall have the right of complaint to the authority and of prompt hearing and decision thereon, under such rules and regulations as it shall prescribe, in respect of any decision, rule, regulation, order, or finding made by the authority.

(c) Any interested party shall have the right of appeal to the Administrator of the National Industrial Recovery Act, under such rules and regulations as he shall prescribe, in respect of any decision, rule, regulation, order or finding made by the authority.

ART. XVIII. *Jurisdiction.*—This code, when approved by the President, shall apply to all persons engaged in the lumber and timber products industries as defined herein.

ART. XIX. *Effective date and termination.*—(a) The provisions of this code in respect of maximum hours and minimum wages shall be in effect beginning three days after its approval by the President; and other provisions of the code, unless specifically provided otherwise, ten days after approval by the President; Schedule B shall be in effect at such date as may be specified by the authority; but not later than November 1, 1933.

(b) This code shall terminate on June 16, 1935, or on such earlier date as the National Industrial Recovery Act may cease to be effective.

(c) This code shall continue in effect for a period of six (6) months after the date of approval thereof by the President in order to afford to the President an apportunity to determine upon the recommendations of his representatives on the authority, which recommendations shall be made periodically or as often as the said representatives deem necessary or advisable but in any event not later than six months after the date of approval of this code by the President, whether its provisions will effectuate the purposes of Title I of the National Industrial Recovery Act, subject, however, to amendment at any time, as hereinbefore provided, and subject also to the reserved power of the President to cancel or modify his approval thereof. This code shall continue in effect after the expiration of said period of six (6) months in the absence of the exercise of such reserved right on the part of the President.

Schedule A

Division and Subdivision—Code Provisions

(Parenthetical references in these provisions refer to articles of the code)

1. Cypress Division.
2. Hardwood Division:
3. Appalachian and Southern Hardwood Subdivision.
4. Mahogany Subdivision.
5. Philippine Mahogany Subdivision.

6. Walnut Subdivision.
7. Northern Hardwood Subdivision.
8. North Central Hardwood Subdivision.
9. Northeastern Hardwood Subdivision.
10. Northern Hemlock Division.
11. Northern Pine Division.
12. Redwood Division.
13. Northeastern Softwood Division.
14. Southern Pine Division:
15. Southern Rotary Cut Lumber Subdivision.
16. West Coast Logging and Lumber Division:
17. Douglas Fir Plywood Subdivision.
18. Douglas Fir Door Subdivision.
19. Western Pine Division.
20. Woodwork Division:
21. Stock Manufacturers Subdivision.
22. Wholesale Distributors Subdivision.
23. Special Woodwork Subdivision.
24. Wooden Package Division:
25. Sawed Box, Shook, Crate, and Tray Subdivision.
26. Plywood Package Subdivision.
27. Standard Container Subdivision.
28. Pacific Veneer Package Subdivision.
29. Egg Case Subdivision.
30. Wirebound Box Subdivision.
30a. Veneer Fruit and Vegetable Package Subdivision.
31. Red Cedar Shingle Division.
32. Stained Shingle Subdivision.
33. Oak Flooring Division.
34. Veneer Division.
35. Maple, Beech, and Birch Flooring Division.
36. Hardwood Dimension Division.

1. Cypress Division

Division (Art. II c).—The Cypress Division consists of producers and manufacturers of lumber and timber products of Tidewater Red Cypress in the states of Florida, Georgia, Louisiana, and South Carolina, and does not include white and yellow cypress or the small amount of red cypress produced by hardwood mills.

Products (Art. II a).—Lumber and Timber products under the jurisdiction of this division include all tidewater red cypress logs, poles, and piling; sawn lumber; planing mill products, except those of planing mills operated in conjunction with retail lumber yards; shingles, flooring, veneers; plywood; lath; boxes and crates.

Administrative agency (Art. III).—The Southern Cypress Manufacturers' Association is designated as the agency of the authority for the administration of the code in this division. Said association, through its board of directors, is authorized to make rules and regulations necessary to administer the code in this division, and shall designate and authorize such agencies as may be required for this purpose.

2. Hardwood Division

Division (Art. II c).—(*a*) The Hardwood Division consists of producers, manufacturers, importers, and distributors of hardwood lumber and timber products, in the following subdivisions:

Walnut Subdivision.
Southern and Appalachian Hardwood Subdivision.
North Central Hardwood Subdivision.
Mahogany Subdivision.
Northeastern Hardwood Subdivision.
Northern Hardwood Subdivision.
Philippine Mahogany Subdivision.

(*b*) Jurisdiction shall also extend to wholesalers, exporters, and distributors of such hardwood products to the extent provided for in the code, in this or any subdivision code provisions, and in the rules of fair trade practice appended in Schedule B.

(*c*) The territory and person subject to the jurisdiction of the seven subdivisions shall be defined by the Hardwood Co-ordinating Committee hereinafter designated. Other subdivisions may be established upon application to the authority through the Hardwood Co-ordinating Committee.

Products (Art. II a).—Hardwood logs, sawn ties, timber and lumber, lath, dimension cut from the log, and products of planing mills operated in conjunction with sawmills and in

respect of any subdivision such additional hardwood timber products as it may enumerate.

Administrative agencies (Art. III).—(a) The administrative agencies in the respective subdivisions shall be as follows:

Walnut Subdivision, American Walnut Manufacturers Association.
Southern and Appalachian Hardwood Subdivision, Hardwood Manufacturers Institute.
North Central Hardwood Subdivision, Indiana Hardwood Lumbermen's Association.
Mahogany Subdivision, Mahogany Association.
Northeastern Hardwood Subdivision, Northeastern Lumber Manufacturers Assn.
Northern Hardwood Subdivision, Northern Hemlock & Hardwood Manufacturers Association.
Philippine Mahogany Subdivision, Philippine Mahogany Manufacturers Import Association.

(b) The Hardwood Co-ordinating Committee, established by the above administrative agencies in conjunction with the National-American Wholesale Lumber Association, the National Hardwood Lumber Association, and the National Lumber Exporters Association, is designated as the agency of the authority for the administration of the code in this division, through and by means of this administrative agency herein designated for each subdivision.

(c) Said committee shall issue and enforce such rules, regulations, and interpretations, including trade practices, impose upon persons subject to the jurisdiction of this division such restrictions and designate such agents and delegate such authority to them as may be deemed necessary; but shall reserve the power and duty to enforce the provisions of the code in this division. The committee may delegate any of its authority to its representatives, selected from its membership, or the membership of the authority, who are hereby empowered to act for the division conclusively in respect of all matters coming before the authority. Such representatives shall constitute the Hardwood Executive Committee. All matters of interest to the division or any subdivision requiring action by the authority shall first be presented to the Hardwood Executive Committee.

(d) Each subdivision shall, under authority of the Hardwood Co-ordinating Committee, select its own administrative agencies. Each subdivision shall be independent and self-governing in respect of all conditions and problems relating to the said subdivision exclusively. Proposals in respect of matters affecting more than one subdivision may be initiated by any subdivision and shall be submitted to the Hardwood Co-ordinating Committee.

[Similar provisions are included in the code for each of the other 34 divisions.]

Schedule B

Rules of Fair Trade Practice for the Lumber and Timber Products Industries

SECTION 1. *Definitions.*—(a) A manufacturer is a person who operates a mill converting logs or lumber into lumber and/or timber products.

(b) The term "sales company" used in this code is a company organized or owned by manufacturers to sell their own or other manufacturers' lumber through salaried salesmen, wholesalers, or commission men.

(c) A *wholesaler* is a person actively and continuously engaged in buying, assembling, or rehandling lumber and timber products from manufacturers or other wholesalers in quantity lots and selling it principally to wholesalers, retailers, and recognized wholesale trade, who maintains a sales organization for this purpose, assumes credit risks and such other obligations as are incident to the transportation and distribution of lumber and timber products. Wholesale assembling and distributing yards as defined in divisional rules and regulations shall also be classed as wholesalers.

(d) A *commission man* is a person located in the territory which he serves, who regularly sells in wholesale quantities for manufacturers or wholesalers to recognized wholesale trade and who is paid a stipulated amount (known as a commission) on each individual sale and holds a relation to the seller similar to that of a salaried salesman.

(e) A *retailer* is one who maintains adequate and permanent storage and handling facilities, a sales organization for the con-

sumer trade and carries a well assorted stock adapted to the normal needs of the consumers in his sales territory.

(f) *Industrial.*—The term "industrial" as used in these rules includes wood fabricators, box and crating manufacturers and users, and users of lumber and timber products in part or all of their manufacturing and shipping processes.

(g) An *exporter* is a manfacturer or sales company or wholesaler with definite foreign connections or established agencies, maintaining a permanent office in the U. S. A., continuously selling and shipping lumber and timber products to foreign countries (Canada and Mexico excepted) in substantial quantities.

(h) An *importer* is a person of any nationality who brings goods, or causes them to be brought, into the United States from any foreign country, whether in bond or not, and whether he is already the owner of the goods before they arrive or purchases them on delivered terms.

SEC. 2. *Wholesalers.*—The lumber wholesaler is an economic factor in the distribution of lumber and it is recognized that he is entitled to compensation for his distribution services.

(a) Each division, and each subdivision, through its designated agency, shall establish for its members and file with the authority a schedule of maximum discounts to be allowed to wholesalers for distribution services. Said discounts when approved by the authority shall remain in effect until changes are approved by it.

(b) As a condition of the grant of wholesale discounts, the wholesaler shall not rebate or allow any part of said discount to any customer, or sell or offer to sell any item of lumber or timber products under the minimum prices established as provided in this code, except to another wholesaler or manufacturer; and he shall conform to all provisions of this code, as they apply to him in the sale and distribution of each species.

SEC. 3. *Commission men.*—The lumber commission man, as an agent of the seller, is entitled to compensation (commission) for his distribution services.

(a) Each division, and each subdivision, through its designated agency, shall establish for its members and file with the

authority a schedule of maximum commissions to be paid to commission men for distribution services. Said commissions when approved by the authority shall remain in effect until changes are approved by it.

(b) As a condition of the payment to him of commissions, the commission man shall not split commissions with any customer nor shall he sell or offer to sell any item of lumber and timber products under the minimum prices established as provided in this code, and he shall conform to all provisions of this code as they apply to him in the sale and distribution of each species.

(c) No manufacturer or wholesaler shall be permitted to have more than one commission representative for each species calling on the same trade in the same territory.

SEC. 4. (a) Buyers' agents who act for the purchaser shall not be entitled to any discounts or allowances on any lumber or timber products sold to their customer stockholders, owners, partners, or parties otherwise interested.

(b) No manufacturer shall give discounts to others than wholesalers or greater in amount than those established and filed in accordance with Section 3 (b) of these rules, or commissions to others than commission men or greater than those established or filed in accordance with Section 4 (b) of these rules, and no manufacturer shall give allowances of any character otherwise than in accordance with standard terms of sale as set forth in Section 5 of these rules.

(c) Direct inter-manufacturer purchases or exchanges of stock, between mills of the same division, for the filling of orders sold on a wholesale basis, shall not be considered as coming under the provisions of this code as regards minimum prices.

(d) Contractual relations between a manufacturer and his sales company, acting as sales agent or outlet at cost, shall not come under the provisions of this code as to wholesale allowances or commissions, but the sales of any such sales company however made shall be in accordance with all provisions of this code.

SEC. 5. *Sales, orders, and invoices.*—(a) Except for water shipment, where the credit risk is satisfactory to the seller, lum-

ber and timber products sold by manufacturers and wholesalers shall not be more liberal to the buyer than as follows:

(1) To retailers—60 days net from date of invoice, or a cash discount of 2 per cent of the net amount after deducting actual freight if paid within 5 days after arrival of car.

(2) To wholesalers—80 per cent of the net amount after deducting estimated freight within 15 days from date of invoice, balance less 2 per cent of total net after deducting actual freight within 60 days from date of invoice.

(3) To industrials and buyers not otherwise classified—60 days net from date of invoice or a cash discount of 2 per cent of the net amount after deducting freight if paid within 10 days after arrival of car.

(4) Prepaid freight shall be net and subject to sight draft, or to payment upon receipt of invoice.

(b) No lumber and timber products on which minimum prices have been established under this code shall be sold for less than the said established prices, except when sold to wholesalers under provisions of Section 2.

(c) No lumber or timber products shall be sold with any guarantee against decline in price before or after delivery.

(d) Except for water shipment, manufacturers and wholesalers shall not make contracts with retailers and/or wholesalers for future shipment to retailers at current prices for shipment over a longer period than 30 days from date of order. Except as specifically authorized by the division or subdivision authority, manufacturers and wholesalers shall not make contracts with industrials and/or wholesalers for shipments to industrials at current prices for a longer period than three months from date of order, except when said contracts contain a provision for a price adjustment to be effective for each succeeding ninety-day period, which revised prices shall be not less than the established minimum prices at the time of each adjustment. The foregoing restrictions shall not apply to lumber or timber products sold for a specific construction job on a contract not subject to cancellation. Complete specifications covering all orders for rail or water shipments shall be furnished to the seller within ten days from date of order.

(e) In figuring delivered prices for rail shipment, by adding

freight charges to mill prices, the seller shall use the established schedule of weights for the species sold.

(f) Prices shown on order and invoice shall not include any manufacturer's sales, excise, privilege, or other tax, freight surcharge or charge imposed upon or incident to said transaction, or by reason thereof, by any governmental authority, either by present or future enactment, and no such tax, surcharge or charge shall be deductible from invoice by buyer in making remittance to either manufacturer or wholesaler.

(g) All quotations shall include a definite limit of time for acceptance, but in no case shall quotations be for a period longer than 15 days from date of quotation, except on special construction projects, not to exceed 60 days.

(h) No manufacturer or wholesaler shall make a carload sale that requires invoicing and delivery to more than three retailers or more than one stop-over at origin and one stop-over at destination. Pool car sales of less than 10,000 feet to any one customer shall be subject to such service charge as may be established by each of the several divisions. Stop-over charges, if any, shall be paid by the buyer or buyers in addition to the invoice price.

(i) Orders and invoices shall show terms of sales, association grade, species, quantities, sizes, and price of each item for agreed delivery. In respect to lumber and timber products not of American Lumber standard size and/or association grade both order and invoice shall show the nominal and finished sizes and the grade sold by reference to some non-association specification on file with the division, or completely stating the specifications. Orders and invoices shall state whether the stock is green, air dried, or kiln dried.

(j) Neither manufacturers nor wholesalers shall place stock in transit via rail. Neither manufacturers nor wholesalers (except such wholesalers as have acquired full and unconditional title to the stock prior to shipment) shall place unsold stock in transit via water. Neither manufacturers nor wholesalers shall place stock on consignment.

(k) In respect of lumber special non-standard sizes and grades may be manufactured and sold under special contract, but grade, size, both rough and dressed, and price must be detailed in both order and invoice. The manufacture, purchase and/or sale of non-standard sizes, grades, and classifications of lumber and

timber products for the purposes of evading any of the provisions of this code is hereby prohibited.

SEC. 6. *Grading and inspection.*—(a) In the absence of an express sales agreement all lumber and timber products shall be manufactured and graded in accordance with official published manufacturers association grading and inspection rules applicable thereto. In the absence of an express sales agreement, trade terms, definitions, and all other terms, words or phrases, and regulations relating to the manufacture, sale, invoicing, and shipment of lumber are understood to be interpreted and applied in accordance with the applicable provisions of the official manufacturers association grading rules in effect at the time of sale.

(b) Manufacturers and wholesalers shall not alter grades by taking out either the poorest or the best material or by adding lower or higher grade material for the purpose of evading the provisions of the code.

(c) If lumber is grade marked or species marked only the standard manufacturers association grade marks and species marks wherever established shall be used.

(d) Manufacturers and wholesalers shall not misbrand or invoice falsely any lumber as to quantity, size, grade, origin, species, or condition of dryness.

(e) Official inspection, when required by either buyer or seller, shall be made only by an official inspector of the manufacturers association issuing the official grading rules for the species to be inspected, applying the rules agreed to at the time of sale, or, in the event of no such agreement, the official manufacturers association grading rules and regulations under which the lumber or timber products are commonly bought and sold.

(f) Except for water shipment as certification of quantity and grade of lumber and timber products shipped, an official manufacturers association car card (shippers certificate) shall be placed in each car shipped; such certificate shall not disclose the name of the originating manufacturer but shall carry such marks or number as will enable the division or subdivision to trace the shipment. For shipments requiring official inspection at point of origin the official certification of the manufacturers association inspection agencies shall be furnished.

(g) All lumber and timber products either rough or dressed

manufactured to sizes below American Lumber standards and/or manufacturers association standards sold on standard nominal size shall be branded "sub-standard" and such brand shall not be obliterated or removed.

SEC. 7. *Arbitration.*—Any dispute between parties coming within the provisions of this code involving $50.00 or more and arising out of transactions in respect to the sale of lumber and timber products, except as to grade or tally, may be referred to an arbitration committee. For this purpose the disputants agreeing to arbitration shall sign an arbitration agreement approved by the authority for which application may be made to any division. In the event of the failure of the disputants to agree as to the arbitration agency the authority may designate an agency to conduct the arbitration. The findings and award of said arbitration through said agency shall be final and binding upon both parties.

SEC. 8. *Policing.*—The authority shall establish such agencies generally distributed through the United States as it may deem necessary to provide for such prompt relaxation of these rules and/or interpretation thereof as may be necessary to prevent these rules from promoting monopolies or eliminating or oppressing small enterprises or operating to discriminate against them, and shall invest such agencies with all power and authority necessary or appropriate to secure prompt decision of such questions.

SEC. 9. *Export business.*—These rules shall not apply to export business which shall be subject to the supplemental rules of fair trade practice of each division or subdivision.

3. TRADE PRACTICE PROVISIONS OF THE RUBBER TIRE MANUFACTURING INDUSTRY CODE

(The list of unfair trade practices is illustrative of similar lists in many codes, though rather more comprehensive than most such lists.)

ARTICLE VI

A. Trade Practices

SECTION 1. No member shall use advertising (whether printed, radio, display, or of any other nature) or other representation which is inaccurate in any material particular or which

refers inaccurately to competitors or their commodities, prices, values, credit terms, policies, or services. No member shall, in any way, misrepresent any commodity (including its use, trade mark, grade, quality, quantity, origin, size, specifications) or his credit terms, values, policies, services, or the nature or form of the business conducted.

SEC. 2. No member shall use advertising or selling methods or credit terms which tend to deceive or mislead a customer or prospective customer.

SEC. 3. No member shall publish or circularize unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers.

SEC. 4. No member shall secretly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, for the purpose of influencing a sale; nor shall a member secretly extend to any customer any special service or privilege not extended to all customers of the same class.

SEC. 5. No member shall give, permit to be given, or offer to give anything of value for the purpose of influencing or rewarding the action of any employee or agent of another, in relation to the business of the employer of such employee, or the principal of such agent without the knowledge of such employer or principal.

SEC. 6. No member shall, directly or indirectly, give or permit to be given or offer to give, money or anything of value, to any customer or prospective customer, or to anyone else upon the instigation and for the benefit of any customer or prospective customer, to induce such customer or prospective customer to purchase tires or tubes from such members.

SEC. 7. No member shall secure confidential information concerning the business of a competitor by a false or misleading statement or representation, by a false impersonation of one in authority by bribery, or by any other unfair method.

SEC 8. No member shall unfairly attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such

member unfairly interfere with or obstruct the performance of such contractual duties or services.

SEC. 9. No member shall brand or mark or pack any commodity in any manner which tends to deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, or specification of such commodity.

SEC. 10. After February 1, 1934, no member shall manufacture any automobile, truck, and/or bus pneumatic tires which do not clearly indicate on the side wall of the casing and on the label the number of cord plies from bead to bead, built into the casing. Breaker strips shall not be construed as plies for side wall or label marking. Plies extending from the heel of one bead to the heal of the other bead, if of substantially the same construction as other plies in the tire, shall not be construed as breaker strips. The code authority may designate such markings for purposes of this section.

SEC. 11. The unauthorized use by any member either in writing or oral form, of trade marks, trade names, or slogans identical with or in imitation of, those already in use by any other member, shall be prohibited.

SEC. 12. No member shall withhold from or insert into any invoice anything which would make the invoice a false record, wholly or in part, of the transaction to which it refers, or make any arrangement which contemplates payment or settlement contrary to the face of the invoice. No member shall postdate or predate orders, invoices, or contracts. This section shall not prohibit the granting of a bonus in accordance with any member's regular program.

SEC. 13. Within ten days after the effective date of this code, each member shall file with the association all consumers' preferred wholesale and state lists. The consumers' lists shall be the lists from which dealer and/or jobber discounts shall be applicable and shall apply to the sale of tires and/or tubes to owners of less than five vehicles. The preferred wholesale lists shall apply to commercial operators of five or more vehicles. The state lists shall apply to all state, county, and municipal accounts. These lists shall be effective immediately upon such filing.

(a) Thereafter, no member shall change such lists without filing new lists with the association, stating the effective date of such changes; provided that if such change involves a reduction such effective date shall be not less than ten days from a date of filing of the new lists.

(b) The association shall, promptly after receipt of such revised lists, notify all members affected. Such affected members may thereupon file with the association revisions of their lists which, if filed prior to the date when the revised lists first filed shall go into effect, may become effective on said date.

(c) No member shall fill at old prices orders received or showing postmark after 12:01 A.M. of the day upon which his new lists become effective. No member shall give any information to any class of trade regarding price changes prior to the date of filing thereof with the association.

SEC. 14. No member shall solicit the reinstatement of any order previously cancelled, at other than his own current prices.

SEC. 15. Effective immediately upon the signing of this code by the President, no member shall sell or offer for sale any tires or tubes which have been, or should be, properly classified as "seconds," except to employees for their own personal use and not for resale purposes. No member shall sell "firsts" as "seconds" under any circumstances.

SEC. 16. No member shall sell or dispose of any tires or tubes of obsolete, discontinued design or change-overs at special prices without first

(a) Notifying the code authority two (2) weeks in advance of the number of tires or tubes to be so disposed of, with the reasons therefor.

(b) Stating discount below the regular established price at which they are to be sold.

(c) Branding such tires, other than change-overs, so to be sold with a suitable design that shall be designated by the code authority.

(d) Obtaining the approval of the code authority for such disposal. If the code authority denies approval or fails to notify such member of its decision within ten (10) days, such member may appeal to the Administrator who shall have power to grant

approval. The code authority shall advise all members of the industry simultaneously of such authorizations.

SEC. 17. For the purposes of Sections 15 and 16 herein, "seconds," obsolete and discontinued designs and change-overs shall be defined as follows:

(a) "Seconds" shall be defined as all tires and/or tubes which have become defective in the course of manufacture.

(b) Obsolete and discontinued designs shall be defined as all tires and/or tubes which have actually been discontinued from production.

(c) Change-over tires shall be defined as original equipment tires which have been removed from new vehicles and which are practically new or show only slight wear.

SEC. 18. No member shall extend dealers' prices to persons other than dealers as herein defined. If the application of this definition in any particular case should work an unjust hardship on any member of the industry or customer, such member or customer may appeal to the code authority which shall have power to make such exception as justice may require.

SEC. 19. No member shall extend jobbers' prices to dealers as herein defined. If the application of this section in any particular case should work an unjust hardship on any member of the industry or customer, such member or customer may appeal to the code authority which shall have power to make such exception as justice may require.

SEC. 20. No member shall take over from any dealer or jobber, either by purchase or exchange, any tires and/or tubes of other members.

SEC. 21. No member shall offer or give any tires or tubes, or sell any such tires or tubes at reduced prices, for test purposes without prior approval by the code authority.

SEC. 22. No member shall offer to a dealer the discounts and/or allowances given to a warehouse dealer unless the dealer shall be required to perform the services of a warehouse dealer.

SEC. 23. The code authority shall within thirty (30) days after the effective date, obtain from the Tire Committee of the Tire and Rim Association standard specifications for the industry covering cross sectional diameters, anti-skid depths, total

tread thicknesses and such other specifications as in their judgment will standardize manufacturing tolerances within the industry. When these standards shall have been submitted to the industry and approved in accordance with Article X, the association shall send a copy of such standards to every member of the industry. Such standards shall become effective ninety (90) days thereafter and any deviation in the manufacture of any tires beyond the maximum so established, shall constitute an unfair trade practice unless such tires which exceed these specifications shall be sold at a proportionately higher price which truly reflects their higher cost. The code authority upon request of any member shall investigate and rule upon any disputed cases. Should the application of this section in any particular case work an unjust hardship on any member of the industry, such member may appeal to the Administrator who shall have power to grant such exception as justice may require.

SEC. 24. Effective immediately upon the signing of this code by the President no member shall accept written or verbal orders, agreements, or contracts for the sale of tires or tubes to any commercial and/or national account, the effect of which is to guarantee prices on future deliveries.

SEC. 25. Effective immediately upon the signing of this code by the President no member shall use terms of payment to national or commercial accounts exceeding the customary 10th proximo terms or renew or extend existing orders, agreements, or contracts as a subterfuge, in violation of Section 24. For purposes of interpretation of Section 24 orders delivered within thirty (30) days after date of order may be construed as "immediate delivery"; deliveries after such thirty (30) days' period shall be construed as "future delivery" and billed at prices in effect on delivery date.

SEC. 26. No member shall offer for sale a rebuilt and/or retreaded tire without marking on the sidewall thereof a suitable design to be approved by the code authority.

SEC. 27. Violation of any of the provisions of Article VI shall be considered an unfair trade practice and subject to the penalties of the Act.

4. PLANT OPERATION, ACCOUNTING, SELLING, AND STATISTICAL REPORTING PROVISIONS OF THE ENVELOPE INDUSTRY CODE

(The following code provisions, in particular the "open-price" system of price quotation, are of special interest and are typical of numerous codes.)

ARTICLE VI—PLANT OPERATION

1. Subject to the exceptions contained in Sections 2 and 3 hereof, no member shall operate any manufacturing plant in excess of 40 hours per week averaged over a period beginning with the effective date of this code and ending on the 30th day of June, 1934, and thereafter over each successive period of six months beginning on July first and January first of each year or more than 1,040 hours in any such period of six months.

2. For the purposes of the foregoing section, the operating time of any unit of productive machinery in any plant shall be regarded as the operating time of the entire plant, provided, however, that the operating time of not more than one-third of the total number of envelope folding machines in the plant, but not in any case more than three envelope folding machines and/or their necessary complementary equipment, on emergency work, as the same may be defined by the code authority, shall not be counted as plant operating time.

3. If, for a period of one year prior to the 16th day of June, 1933, or for the entire period of time prior to such date that any plant may have been in operation, such plant shall have been steadily operated with one or more extra shifts, employing thereon not less than one-half the number of folding-machine operators employed on the day shift, then said plant may continue to be operated with such extra shift or shifts until May 1st, 1934.

4. The limitations on plant operation may be modified, suspended, or removed by the Administrator at any time if he shall determine that such limitations have reduced or will tend to reduce unduly the supply of envelopes or are for any other reason contrary to public interest.

ARTICLE VII—ACCOUNTING—SELLING

1. The code authority shall, as soon as practicable, formulate a standard method of accounting and costing for the industry and submit the same to the Administrator. When it shall have been approved by the Administrator, every member shall use an accounting and costing system which conforms to the principles of, and is at least as detailed and complete as, such standard method.

2. The code authority may from time to time determine that an open-price plan of selling such product or products of the industry as it shall specify shall be put into effect on such date as it shall fix. Notice of such determination shall be announced to all known members of the industry who manufacture such products not less than 30 days prior to the date so fixed.

3. At least ten days prior to such date, every such member shall file with the code authority a schedule of prices and terms of sale for all such products or, in the alternative, shall be deemed to have filed a schedule conforming in respect to price and terms of sale with the schedule at any time on file which states the lowest price and the most favorable terms.

4. All such schedules shall be in such form as the code authority shall prescribe and shall contain all information necessary to permit any interested person to determine the exact net price per unit after all discounts or other deductions have been made, whether pertaining to a single order, a commitment for future delivery, or a contract. All such original schedules shall become effective on the date fixed by the code authority as provided in Section 2 hereof. Any such schedule, or any price therein, may apply nationally or may be limited to one or more geographical divisions created as provided in Section 7 of Article II hereof.

5. An original schedule, a revised schedule or schedules, or a new schedule or schedules, or a notice of withdrawal of a schedule previously filed may be filed by a member with the code authority at any time, provided, however, that any member who withdraws a schedule without substituting a new schedule therefor shall be deemed to have filed a schedule conforming in respect to price and terms of sale with the schedule at any time thereafter on file which states the lowest price and the most favorable terms. Any schedule or notice filed hereunder, shall become effec-

tive five days after the date of filing, provided, however, that an increased price may become effective at such earlier date as the member filing the same shall fix.

6. The code authority shall promptly supply all members of the industry, who manufacture any particular product, with copies of all schedules, revised schedules, and notices of withdrawal, which pertain to such product. Immediately upon receipt of information relative to the withdrawal of a price for any product, any member may file notice of withdrawal of his own price for the same product effective as of the same date as the notice of withdrawal of such other member. Immediately on receipt of information that a schedule then on file has been revised, or that a new schedule has been filed, any member may file a revised schedule conforming as to price and terms to the schedule of such other member, and effective on the same date, or may notify the code authority that he adopts as his own the schedule of such other member. In the latter event, he shall be deemed to have filed a revised schedule conforming to the revised schedule of such other member.

7. No such schedule of prices and terms of sale filed by any member, or in effect at any time, shall be such as to permit the sale of any product at less than the cost thereof to such member determined in the manner provided in Section 11 hereof, provided, however, that any member may by notice to the code authority, adopt as his own a lower price filed by another designated member. Such adoption shall become automatically void upon the withdrawal or revision upward of the price adopted.

8. No member who shall have filed a price, or adopted as his own, a price filed by another member for any product of the industry, shall sell such product for less than such price or upon terms or conditions more favorable than stated in such price schedule. No member, who shall have failed to file a price for any product for which the open price plan is in effect, shall sell such product at a lower price or on terms more favorable than the lowest price and most favorable terms stated in any price schedule for such product then on file.

9. The code authority shall furnish at cost to any person concerned, whether member or non-member, requesting them, copies of any price schedules which have been filed with it. Such price

schedules shall be made available to non-members at the same time that they are sent to members.

10. No member shall sell any product of the industry for which no open-price plan is in effect at less than the cost thereof to such member, determined as provided in Section 11 hereof, except to meet the price of a competitor whose price does not violate this section.

11. Cost, for the purposes of this article, shall be determined pursuant to the method of accounting and costing prescribed as provided in Section 1 hereof as soon as such method is adopted and approved, and theretofore pursuant to the method employed by such member subject to such preliminary rules as the code authority shall from time to time prescribe with the approval of the Administrator.

12. Every member filing a schedule or notice hereunder shall deliver to the code authority without expense such number of copies thereof as shall be necessary to enable the code authority to supply one copy thereof to each member of the industry and no such schedule or notice shall be deemed to have been filed until such number of copies shall have been received by the code authority.

13. The code authority may at any time suspend the open-price plan of selling either in its entirety or in so far as it applies to any specified product or products of the industry.

14. For the purpose of determining whether Sections 7, 8, 10 and 11 hereof have been complied with, every member shall upon the request of the code authority furnish a designated agency of the code authority, in respect to closed transactions only, with complete information in regard to any quotation, order, contract, or sale of any product of the industry, including information as to specifications, quantities, price, conditions of storage, transportation, or delivery, terms of billing, cash or trade discounts allowed and other pertinent facts relating to such quotation, contract, or sale.

15. Nothing herein contained shall be construed to prevent the disposition of distress merchandise required to be sold to liquidate a defunct or insolvent business in such manner at such price and such terms and conditions as the code authority may approve.

16. Nothing herein contained shall be construed to prevent

the fulfillment of a bona fide contract existing on the effective date of this code. The code authority may require members of the industry to file with its designated agency and in such manner as it shall prescribe such data as it may require in respect of contracts for future deliveries existing on the effective date of this code.

ARTICLE VIII—REPORTS AND STATISTICS

1. Each member shall prepare and file with an impartial agent designated by the code authority at such times and in such manner as it may prescribe, such statistics, data, and information relating to plant capacity, volume of production, volume of sales in units and dollars, orders received, unfilled orders, stocks on hand, inventory, both raw and finished, number of employees, wage rates, employee earnings, hours of work, and other matters, as the code authority or the Administrator may from time to time require. Any or all information so furnished by any member shall be subject to checking for the purpose of verification by an examination of the books and accounts and records of such member by any disinterested accountant or accountants or other qualified person or persons designated by the code authority.

2. Except as otherwise provided in the Act, or in this code, all statistics, data, and information filed or required in accordance with the provisions of this code hereof shall be confidential and the statistics, data, and information of one member shall not be revealed to another member. No such data or information shall be published except in combination with other similar data and in such a manner as to avoid the disclosure of confidential information. The code authority shall arrange for the publication currently to members of such statistics of the industry as the code authority may determine to be necessary.

3. The code authority shall make such reports to the Administrator as he may from time to time require.

4. In addition to information required to be submitted to the code authority there shall be furnished to the government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act.

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